3-06-91
Vol. 56 No. 44
Pages 9269-9580

federal register

Wednesday
March 6, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–0186
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–0186
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–0186
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

Contents

Federal Register

Vol. 56, No. 44

Wednesday, March 6, 1991

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6255 9269
6256 9579
Administrative Orders:
Memorandums:
February 21, 1991 9271

7 CFR
17 9273
301 9273
1046 9274
Proposed Rules:
704 9293
920 9302
1005 9306
1410 9293

11 CFR
110 9275

12 CFR
Proposed Rules:
327 9308

16 CFR
1500 9276
1502 9276

18 CFR
1301 9288

19 CFR
Proposed Rules:
141 9311

21 CFR
Proposed Rules:
201 9312

24 CFR
Ch. I 9472

30 CFR
Proposed Rules:
935 9312

32 CFR
627 9424
Proposed Rules:
299a 9314

33 CFR
3 9288
165 9289

40 CFR
82 9518
147 9408
Proposed Rules:
Ch. I 9315

41 CFR
302-11 9289

44 CFR
353 9452

49 CFR
Proposed Rules:
1053 9339

50 CFR
Proposed Rules:
20 9462

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

Presidential Documents

Title 3—

The President

Proclamation 6255 of March 1, 1991

Federal Employees Recognition Week, 1991

By the President of the United States of America

A Proclamation

The strength and effectiveness of the United States Government depends, in great part, on the knowledge, dedication, and skill of Federal employees. Whether they serve here at home or in posts abroad, employees of the Federal Government contribute substantially to the social, political, and economic stability of our Nation and to the protection of U.S. interests around the world.

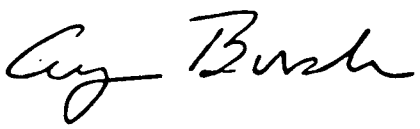
Each and every American benefits daily, in numerous ways, from the work of Federal employees. It is these dedicated public servants who issue Social Security checks, ensure the safety of food and medicine, investigate possible cures for disease, promote the safety of our highways and air travel, and lead the fight against illict drug trafficking. Federal employees also provide vital support to the members of our Armed Forces and, in so doing, help to guarantee our national security and military preparedness. The recent success of Operation Desert Storm underscores our debt to the able and loyal work of Federal employees.

This week we express both our pride in public service and our appreciation for all those men and women who serve their fellow Americans as Federal employees.

The Congress, by Senate Joint Resolution 51, has designated the week beginning March 4, 1991, as "Federal Employees Recognition Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 4, 1991, as Federal Employees Recognition Week. I call upon all Americans to observe this week with appropriate ceremonies and activities, in grateful recognition of the dedicated service provided to the Nation by employees of the Federal Government.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-5438
Filed 3-4-91; 3:00 pm]
Billing code 3195-01-M

Presidential Documents

Memorandum of February 21, 1991

Delegation of Authority Regarding Report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on Possible Noncommunist Resistance (NCR) Cooperation With the Khmer Rouge

Memorandum for the Secretary of State

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to you the functions vested in me by section 562A(b)(3) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513), relating to the submission of a report to the Speaker of the House of Representatives and the President pro tempore of the Senate regarding possible NCR cooperation with the Khmer Rouge. The authority delegated by this memorandum may be further redelegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register.**

THE WHITE HOUSE,
Washington, February 21, 1991.

[FR Doc. 91–5466
Filed 3–4–91; 4:09 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

DEPARTMENT OF AGRICULTURE
Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities; Correction

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule; correction.

SUMMARY: The Foreign Agricultural Service (FAS) is correcting two errors in the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Cong.), which appeared in the Federal Register on February 1, 1991 (56 FR 3966).

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, U.S. Department of Agriculture, 14th and Independence SW., Washington, DC 20250-1000, Telephone: (202) 447-3664.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS) published an interim rule that amended the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), to comply with amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990 to Public Law 480 which became effective January 1, 1991. This amendment contained two errors which are discussed below and which are corrected by this notice.

In § 17.5(c)(8), as amended, the phrase "* * * selection as agent or the participant or importer" should have read "* * * selection as agent of the participant or importer."

§ 17.14, as amended, inadvertently contained two paragraphs designated "(iii)". The second paragraph "(iii)" is now designated "(iv)".

The following corrections are made in the Pub. L. 480, title I Financing Regulations published in the Federal Register on February 1, 1991 (56 FR 3966).

§ 17.5 [Corrected]

On page 3969, first column, § 17.5(c)(8) is corrected to read as follows:

§ 17.5 Agents of the participant or importer.

* * * * *

(c) * * *

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment or other benefit in connection with the person's selection as agent of the participant or importer.

* * * * *

§ 17.14 [Corrected]

On page 3970, second column, the amendatory language of item 7 is corrected to read as follows:

7. In § 17.14, paragraph (b)(1)(i) is revised, paragraph (b)(1)(ii) is designated as (b)(1)(iv) and new paragraphs (b)(1)(ii) and (b)(1)(iii) are added, paragraph (j)(8) is revised and paragraphs (j)(9) and (10) are added to read as follows:

* * * * *

Signed at Washington, DC on February 28, 1991.

F. Paul Dickerson,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 91-5302 Filed 3-5-91; 8:45 am]
BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-015]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. This action removes unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective March 6, 1991. Consideration will be given only to comments received on or before May 6, 1991.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-015. Comments received may be inspected at USDA. room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917, and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations contained in 7 CFR 301.52 *et seq.* (referred to below as the pink bollworm regulations) quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the spread of the pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas.

Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of the pink bollworm into noninfested areas. However, the eradication of the pink bollworm is undertaken as an objective only in places that are designated as suppressive areas. Prior to the effective date of this rule, a portion of Desha County was the only area in Arkansas designated as a suppressive area. Based on trapping surveys conducted by inspectors of Arkansas State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, an agency of the U.S. Department of Agriculture, we have determined that the pink bollworm has been eradicated from that portion of Desha County listed as a suppressive area. No evidence of pink bollworm infestations has been found in this area since October 12, 1988. We are therefore removing this area from the list of suppressive areas in § 301.52–2a. Since this area was the only remaining area in Arkansas regulated because of the pink bollworm, we are also removing Arkansas from the list of States in § 301.52(a) quarantined because of the pink bollworm.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to relieve unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make this rule effective upon publication. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing the comments we received and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area that will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR part 301 is amended as follows:

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.52 [Amended]

2. In § 301.52, paragraph (a), the reference to Arkansas is removed.

§ 301.52–2a [Amended]

3. In § 301.52–2a, the reference to Arkansas and all of the material for Arkansas thereunder are removed.

Done in Washington, DC, this 28th day of February 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–5192 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 1046

[Docket No. AO–123–A60; DA–90–002]

Milk in the Louisville-Lexington-Evansville Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Louisville-Lexington-Evansville Federal milk marketing order. As amended, milk diverted from a city plant to other plants would be counted as a receipt of the city plant in determining the city plant's Class I utilization for pool plant status. Also, a "net shipments" concept applies to movements of milk between a country plant and a city plant in determining whether the country plant qualifies to be a pool plant. The action is based on industry proposals considered at a public hearing held March 13–14, 1990. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Louisville-Lexington-Evansville marketing area.

EFFECTIVE DATE: April 1, 1991.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued February 13, 1990; published February 20, 1990 (55 FR 5852).

Recommended decision: Issued October 1, 1990; published October 4, 1990 (55 FR 40670).

Final decision: Issued January 10, 1991; published January 18, 1991 (56 FR 1950).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Louisville-Lexington-Evansville order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that: (1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that: (1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1046

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. The authority citation for 7 CFR part 1046 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1046.7, paragraphs (a)(1), (b) and (c) are revised to read as follows:

§ 1046.7 Pool plant.

(a) A city plant which meets the following requirements:

(1) The total quantity of fluid products, except filled milk, disposed of in Class I is not less than 50 percent in each of the months of August through November and January and February, and is not less than 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1046.13; and

* * * * *

(b) A country plant which delivers milk or skim milk to city plants during any of the months of August through November and January and February equal to not less than 50 percent, and during other months of the year equal to not less than 40 percent, of the milk from persons described in § 1046.12(a)(1) and from handlers described in § 1046.9(c) that is physically received at such country plant (except by diversion from other plants) or diverted therefrom pursuant to § 1046.13. In determining whether a country plant has met the required shipments, milk or skim milk transferred or diverted from a city plant to a country plant (or a nonpool plant located at such site or a nonpool plant operated by the same company) that receives milk or skim milk as a transfer or diversion from such city plant shall be offset against the country plant's transfer or diversion from such city plant to the extent that such milk or skim milk movements by the city plant exceed 5 percent of the milk or skim milk transferred or diverted from the country plant. The operator of a country plant may include milk diverted pursuant to § 1046.13(b) from such plant to a city plant in meeting up to one-half of the shipping percentage(s) specified in this paragraph.

(c) Except for March through July 1991 a country plant that was a pool plant pursuant to paragraph (b) of this section each month during the preceding August through February shall continue to be a pool plant during each of the months of March through July, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following. A country plant that qualified as a pool plant during each of the months of September 1990 through February 1991 shall be a pool plant for the months of March through July 1991, unless the operator of such plant notifies the market administrator in writing on or before February 15 of withdrawal of the plant from the pool for the months of March through July next following.

Effective date: April 1, 1991.

Signed at Washington, DC, on: February 28, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91–5279 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL ELECTION COMMISSION

[Notice 1991–2]

11 CFR Part 110

Honoraria: Contribution and Expenditure Limitations and Prohibitions

AGENCY: Federal Election Commission.

ACTION: Final rule; Technical amendment.

SUMMARY: The Commission is publishing today a technical amendment to its regulations on acceptance of honoraria (11 CFR 110.12) to conform that section to the Ethics Reform Act of 1989. The Ethics Reform Act modified the Federal Election Campaign Act regarding honoraria, by changing the law to apply only to Senators and officers and employees of the Senate. Public Law 101–194 (Nov. 30, 1989). The

prior law applied to officers and employees of any branch of the Federal Government. The technical amendments to the Ethics Reform Act of 1989 also added a child of an honorarium recipient to the list of persons whose travel and subsistence expenses are exempted from the $2,000 limit. Public Law 101-280 (May 4, 1990).

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act of 1971 ["FECA"], at 2 U.S.C. 441i, governs the acceptance of honoraria. The Commission's regulations implementing this section are contained in 11 CFR 110.12. Prior to the Ethics Reform Act of 1989, the Federal Election Campaign Act and the regulations implementing it provided that persons who are elected or appointed officers or employees of the Federal Government could not accept honoraria exceeding $2,000. Amounts accepted for actual travel and subsistence expenses for the person and his or her spouse or aide were excluded from the $2,000 limit. The Act and the regulations implementing it also provided that any honorarium paid by or on behalf of the officer or employee to a charitable organization was not "accepted" for the purposes of the Act.

The Ethics Reform Act of 1989 amended FECA in part by limiting the ability to accept honoraria after January 1, 1991 to Senators and officers and employees of the Senate. Public Law 101-194 (November 30, 1989). It also provided that any honorarium paid by or on behalf of a Senator or any officer or employee of the Senate to a charitable organization shall be deemed not "accepted" for the purposes of FECA. In the later technical amendments to the Ethics Reform Act, an honorarium recipient's child was added to the list of persons whose actual travel and subsistence expenses are excluded from the $2,000 limit. Public Law 101-280 (May 4, 1990).

The technical amendment published in this notice modifies the Commission's regulations governing the acceptance of honoraria at 11 CFR 110.12 (a) and (b) to bring the regulations into conformance with these amendments to the FECA. Because the amendment is merely technical, it is exempt from the notice and comment requirements of the Administrative Procedure Act (see 5 U.S.C. 553(b)(B)) and 2 U.S.C. 438(d) (relating to legislative review of Commission regulations). It is therefore made effective March 6, 1991.

List of Subjects in 11 CFR Part 110

Government employees.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

I certify that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that only officers and employees of the Federal Government are affected, and therefore, no small entity is affected under the final rule.

For the reasons set out in the preamble, subchapter A, chapter I, title 11 of the Code of Federal Regulations is amended as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441i.

2. Section 110.12 is amended by revising paragraphs (a), (b) introductory text, and (b) (1) and (5) to read as follows:

§ 110.12 Honoraria (2 U.S.C. 441i).

(a) No individual while a Senator or officer or employee of the Senate shall accept any hororarium of more than $2,000.

(b) For the purposes of this section, the term "honorarium" means a payment of money or anything of value received by a Senator or officer or employee of the Senate, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or child or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

(1) *Officer or employee.* The term "officer or employee" means any person appointed or elected to a position of responsibility or authority in the United States Senate, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States Senate, who accepts an honorarium for an appearance, speech, or article.

* * * * *

(5) *Accepted.* "Accepted" means that there has been actual or constructive receipt of the honorarium and that the Senator or officer or employee of the Senate exercises dominion or control over it and determines its subsequent use. However, an honorarium is not deemed accepted for the purposes of 11 CFR 110.12 if the Senator or officer or employee of the Senate pays the honorarium to a charitable organization, or if the honorarium is paid to a charitable organization on behalf of the Senator or officer or employee of the Senate. Nothing in this paragraph shall be construed as an interpretation of the relevant provisions of the Internal Revenue Code (title 26, United States Code).

* * * * *

Dated: February 28, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-5250 Filed 3-5-91; 8:45 am]

BILLING CODE 6715-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1502

Procedures for Formal Evidentiary Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: When the Commission is promulgating certain rules under the Federal Hazardous Substances Act ("FHSA") or the Poison Prevention Packaging Act ("PPPA"), the proceeding is governed by the provisions of section 701(e) through (g) of the Federal Food, Drug and Cosmetic Act ("FDCA"). Section 701(e) of the FDCA provides that, once a final rule is issued, interested persons have a period of 30 days in which to file objections to the final rule and to request a public hearing upon these objections. The Commission is finalizing procedural rules, based on those currently in use by the Food and Drug Administration ("FDA"), for conducting a formal evidentiary public hearing when such a hearing is provided for under the FHSA or the PPPA or when the Commission determines that such a hearing is in the public interest. The Commission is also withdrawing 16 CFR 1500.201, which restated the statutory requirements for such hearings.

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of the General Counsel, Consumer Product

Safety Commission, Washington, DC 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION:

A. Background and Introduction

(1) The FHSA and PPPA

When Congress created the Commission in 1973, the Consumer Product Safety Act ("CPSA") transferred authority to the Commission to administer four other statutes previously administered by other agencies. 15 U.S.C. 2079(a). Among those transferred statutes were the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261 *et seq.*, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471n *et seq.* Prior to the transfer, the FHSA and the PPPA had been administered by the Food and Drug Administration ("FDA") of the then-Department of Health, Education, and Welfare.

The FHSA provides for the opportunity for a formal public evidentiary hearing pursuant to section 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. 371, in three instances: (1) when the Commission issues, amends, or repeals regulations to classify a hazardous substance intended for household use as a "banned hazardous substance" in accordance with section 2(q)(1)(B) of the FHSA, 15 U.S.C. 1261(q)(2); (2) when the Commission decides, pursuant to section 3(a) of the FHSA, to issue, amend, or repeal a regulation that declares that a substance or mixture is a hazardous substance as defined by section 2(f) (1)(A) of the FHSA, 15 U.S.C. 1262(a) (2); and (3) when the Commission elects to follow the procedures prescribed by section 701(e) of the FDCA in determining that a toy or other article intended for children presents an electrical, mechanical, or thermal hazard, 15 U.S.C. 1262(e)(1).

The PPPA provides, in section 5, that the Commission may elect to follow FDCA's section 701(e) procedures when the Commission issues, amends, or repeals a regulation that prescribes a standard under section 3 of the PPPA. 15 U.S.C. 1474(a).

(2) The Provisions of Section 701(e)-(g) of the FDCA

Once the Commission finalizes a rule under any of these provisions of the FHSA or the PPPA, the procedures of section 701(e) of the FDCA may apply. These procedures provide that when the Commission issues a final rule, interested persons have a period of thirty (30) days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. The filing of objections stays the implementation of those provisions to which objections are directed. 21 U.S.C. 371(e)(2). After the hearing, the presiding officer issues an order, based upon substantial evidence. 21 U.S.C. 371(e)(3). A person who is adversely affected by a final order on the objections may file a petition for review with the appropriate United States court of appeals. 21 U.S.C. 371(f). Section 701(g) provides for supplying the transcript of the hearing to interested parties upon request. 21 U.S.C. 371(g).

(3) Existing Rules Governing 701(e) Proceedings

At the time the FHSA and the PPPA were transferred to the Commission, FDA had issued rules governing the procedure for 701(e) hearings. 21 CFR 2.51-2.104 (1973). Congress provided that regulations in effect at the time the FHSA and the PPPA were transferred continue in effect until they are modified, superseded, set aside, or repealed by the Commission, a court, or operation of law. 15 U.S.C. 2079(e)(2). Currently, any 701(e) type of proceeding that the Commission would conduct would be governed by the FDA's procedural rules as they existed at the time of transfer. The procedural rules finalized today would supersede the FDA regulations (21 CFR 2.51-2.104 (1973)) that were in existence at the time the FHSA was transferred to the Commission, insofar as those rules still apply to the Commission by virtue of 15 U.S.C. 2079(e)(2).

Section 1500.201 of the Commission's existing regulations essentially restates the FHSA's statutory provisions concerning 701(e) proceedings. The regulations finalized today will go beyond these existing regulations, and expand on the procedures for such hearings. The existing regulations also restate the statutory language in section 2(q)(2) of the FHSA concerning hazardous substances that present an imminent hazard. The Commission is withdrawing 16 CFR 1500.201 because these regulations will be repetitious and unnecessary with promulgation of new regulations at part 1502.

(4) The Proposed Procedures for 701(e) Hearings

On November 21, 1990, the Commission issued a notice of proposed rulemaking specifying the procedures for formal evidentiary public hearings, such as hearings required under section 701(e) of the FDCA. These proposed regulations were drawn substantially from the procedures FDA now follows in a 701(e) procedure, codified at 21 CFR part 12. The Commission received no comments in response to the notice of proposed rulemaking. The final rules issued today are identical to those proposed in the November 21, 1990 notice. The procedures will be used in connection with formal rulemaking. The Commission's rules for adjudicative proceedings set forth at 16 CFR part 1025 would not be affected by these procedures and would still apply to any adjudicative proceedings.

B. Summary of Procedures

Subpart A of the rules contains general provisions describing the scope of the procedures, the method for computation of time, the procedures for treatment of confidential information, and the address of the Commission's Office of the Secretary. The scope section provides that the procedures apply when a person has a right to an opportunity for a hearing under sections 2(q)(1) (B) or 3(a) of the FHSA and section 701(e) of the FDCA, or when the Commission elects to hold a hearing under section 3(e) of the FHSA or section 5(a) of the PPPA and section 701(e) of the FDCA. The procedures may also apply when the Commission concludes that a formal evidentiary public hearing on a matter before it is in the public interest.

Subpart B describes details concerning the initiation of proceedings to which these rules apply. Section 1502.5 explains that a person may file written objections to a final regulation to which this procedure applies on or before the 30th day of publication of the final rule. Section 1502.6 describes the form which objections and requests for a hearing must take when filed with the Office of the Secretary. Section 1502.7 provides that the Commission will publish a notice in the **Federal Register** after the time for filing objections has expired, which notice will state either that no objections have been filed, or will specify the parts of the regulation that have been stayed by the filing of proper objections. Section 1502.8 describes the situations in which the Commission will grant a request for a hearing.

Section 1502.9 provides that the Commission will promptly publish a notice in the **Federal Register** if it determines that the regulation at issue should be modified or revoked. Section 1502.10 provides that if the Commission determines to deny a request for a hearing, in whole or in part, it will publish a notice in the **Federal Register**. Section 1502.10 further specifies the required contents of such a notice, describes what constitutes the record of the Commission's denial of a hearing, and explains that denial of a request for

a hearing is reviewable in the courts. Section 1502.11 explains that a person may submit objections and waive the right to a hearing. Section 1502.12 describes the procedure by which a person with a right to request a formal hearing may waive that right and request an alternative form of hearing under 16 CFR part 1052. Section 1502.13 specifies the contents of a notice declaring that a hearing is justified, and explains that a hearing is deemed to begin on the date of publication of the notice of hearing. Section 1502.14 explains that if no objections are filed and no hearing is requested, the regulation is effective on the date specified in the regulation as promulgated, and that the Commission will publish a notice confirming that date.

Subpart C provides that a person who wishes to appear in any hearing should file a notice of participation. This subpart also describes the contents of a notice of appearance, and explains the parameters for Commission advice and communication on public participation in hearings (including *ex parte* communications).

Subpart D explains that the presiding officer will be an administrative law judge, describes the powers of the presiding officer, and explains the circumstances in which the presiding officer may withdraw from the proceeding.

Subpart E describes the hearing procedures. Section 1502.23 specifies the procedures for the filing and service of submissions. Section 1502.24 describes the procedure for submitting a petition to participate *in forma pauperis*. Section 1502.25 describes the data and information to be relied upon by the participants in the hearing. Section 1502.26 describes the procedure for direct testimony, explains when oral cross-examination will be permitted, and provides that the proponent of a substitute provision has the burden of proof in relation to the new provision. Section 1502.27 describes the activities permitted and prohibited for nonparty participants. Section 1502.28 describes acceptable conduct for participants in oral hearings and conferences. Section 1502.29 provides for notice of the time and place of a prehearing conference. Section 1502.30 describes the procedure for a prehearing conference. Section 1502.31 provides that after a hearing has commenced, a participant may move for a summary decision on any issue in the hearing, describes the circumstances in which the presiding officer will grant such a motion, and specifies the papers which should be submitted in support of, or in opposition to, such a motion. Section 1502.32 describes the contents of the administrative record of the hearing, and describes the evidence and testimony that are admissible. Section 1502.33 explains when official notice may be taken. Section 1502.34 explains the procedure for filing briefs, and the contents of briefs and arguments. Section 1502.35 describes the circumstances in which an interlocutory appeal from a ruling of the presiding officer may be made to the Commission, and the procedure for filing such an appeal. Section 1502.36 provides for the compilation of an official transcript of the hearing. Section 1502.37 describes the procedure for filing motions.

Subpart F describes the contents of the administrative record of a hearing, and provides for public availability of documents.

Subpart G provides for an initial and final decision in a hearing. Section 1502.40 requires the presiding officer to file an initial decision, describes the contents of the initial decision, and provides that the initial decision becomes the final decision of the Commission unless a participant files exceptions, or the Commission files a notice of review. Section 1502.41 provides for a participant to appeal an initial decision to the Commission by filing exceptions (within 30 days) that specifically identify alleged errors in the initial decision, and provides for the Commission to file a notice to review an initial decision. Section 1502.42 explains the powers of the Commission on appeal or review of an initial decision. Section 1502.43 provides for a participant to petition the Commission for reconsideration of part or all of its decision, or for a stay of its decision.

Subpart H provides for judicial review of the Commission's final decision, and requires a participant to first submit a petition for stay of action before requesting a court to stay the Commission's action pending judicial review.

C. Effects on Small Businesses and Other Small Entities

As required by the Regulatory Flexibility Act, the notice of proposed rulemaking examined the effect the rule would have on small entities. As stated in the notice, the Commission is not establishing new instances in which a formal evidentiary hearing would be held, but is simply specifying in greater detail the procedures that would be required when such a hearing is provided for in the FHSA or the PPPA. Thus, this rule would not place an additional burden on small entities, but explains in greater detail the procedures that would be required when such a hearing is held.

D. Environmental Considerations

The regulation concerns only procedural rules for the conduct of a formal evidentiary public hearing. As stated in the notice of proposed rulemaking, the Commission finds that the rule has no potential for affecting the human environment. Thus, the Commission finds that no environmental assessment or environmental impact statement would be required.

List of Subjects 16 CFR Part 1500

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and Recordkeeping requirements, Toys.

16 CFR Part 1502

Administrative practice and procedure, Consumer protection.

For the reasons set forth in the preamble, the Consumer Product Safety Commission is amending title 16, chapter II, as follows:

PART 1500 [AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1276.

§ 1500.201 [Removed]

2. Section 1500. 201 is removed.

3. Part 1502 is added to read as follows:

PART 1502—PROCEDURES FOR FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.

Subpart B—Initiation of Proceedings

Authority: 15 U.S.C. 1261(q)(1)(B), 1262(a), 1262(e), 1269(a); 15 U.S.C. 1474(a); 21 U.S.C. 371(e)–(g).

Subpart A—General Provisions

§ 1502.1 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under sections 2(q)(1)(B) or 3(a) of the Federal Hazardous Substances Act ("FHSA") and 701(e) of the Federal Food, Drug, and Cosmetic Act ("FDCA") (15 U.S.C. §§ 1261(q)(1)(B) and 1262(a), and 21 U.S.C. 371(e));

(b) The Commission elects to hold a hearing under section 3(e)(1) of the FHSA or section 5 of the Poison Prevention Packaging Act ("PPPA") and section 701(e) of the FDCA (15 U.S.C. 1262(e)(1) and 1474(a), and 21 U.S.C. 371(e)); or

(c) The Commission concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before it in such a proceeding.

§ 1502.2 Computation of time periods.

Whenever a time period for taking action is specified by these procedures, by the presiding officer, or by the Commission, Saturdays, Sundays, and Federal holidays are included in computing time. However, if the last day for taking such action falls on a Saturday, Sunday, or Federal holiday, the action shall be timely if taken on or before the next Federal Government business day.

§ 1502.3 Confidential information.

Whenever any participant desires or is required to submit information in any proceeding under this part 1502, and the participant believes that such information consists of trade secret or other confidential business or financial information that should not be disclosed publicly, the participant may, instead of submitting such information, file a motion for a protective order containing a general description of the information desired to be withheld, together with a detailed argument supporting the claim that the information should be held in confidence.

§ 1502.4 Office of the Secretary.

(a) The mailing address of the Commission's Office of the Secretary is:

Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

(b) The address for delivery to the Office of the Secretary is:

Office of the Secretary, Room 420, 5401 Westbard Avenue, Bethesda, Maryland 20816.

(c) The telephone number of the Office of the Secretary is (301) 492–6800.

Subpart B—Initiation of Proceedings

§ 1502.5 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) The **Federal Register** notice promulgating the final regulation will describe how to submit objections and requests for hearing.

(b) On or before the 30th day after the date of publication of a final regulation in the **Federal Register**, a person may file written objections, with or without a request for a hearing, with the Commission. The 30-day period may not be extended, except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission or for other good cause shown, if consideration of the additional information will not delay review of the objection and request for hearing.

§ 1502.6 Filing objections and requests for a hearing on a regulation.

(a) Objections and requests for a hearing under § 1502.5(a) must be filed with the Office of the Secretary and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in § 1502.5(b).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision(s) of the regulation to which that objection is directed.

(4) Each objection on which a hearing is requested specifically requests a hearing. Failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description of the basis for the objection and the factual information or analysis in support thereof. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 1502.8, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, unless the document is—

(A) A CPSC document that is routinely publicly available; or

(B) A recognized medical or scientific textbook or journal in the public domain.

(ii) A summary of the non-documentary testimony to be presented by any witnesses relied upon must be submitted.

(b) If an objection or request for a public hearing fails to meet the requirements of this section the Office of the General Counsel shall notify the Office of the Secretary of the deficiency. The Office of the Secretary shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 1502.5(b).

(c) If another person objects to a regulation issued in response to a petition, the petitioner may submit a written reply to the Office of the Secretary on or before the 15th day after the last day for filing objections.

§ 1502.7 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under the FHSA or the PPPA and section 701(e) of the Federal Food, Drug, and Cosmetic Act, the Commission shall publish a notice in the **Federal Register** specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 1502.10 and 1502.13.

§ 1502.8 Ruling on objections and requests for hearing.

(a) As soon as practicable, the Commission will review all objections and requests for hearing filed under § 1502.6 and determine—

(1) Whether the regulation should be modified or revoked under § 1502.9; and

(2) Whether a hearing has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commission concludes that the data and information submitted, even though accurate, are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, *e.g.*, if the Commission concludes that the Commission's action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal.

(5) The action requested is not inconsistent with any provision in the FHSA or any regulation in 16 CFR Subchapter C explaining or particularizing the requirements of the FHSA.

(6) The requirements in other applicable regulations, and in the notice promulgating the final regulation or the notice of opportunity for hearing are met.

(c) In making the determinations specified in paragraph (a) of this section, the Commission may issue an appropriate order on the determinations without further notice or opportunity for comment from interested parties. However, the Commission, at its option, may use the procedure specified in 16 CFR part 1052 or any other applicable public procedure available to it.

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commission concludes that summary decision against the person requesting a hearing should be considered, the Commission may serve upon the person by registered mail a proposed order denying a hearing. The person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

§ 1502.9 Modification or revocation of regulation or order.

If, upon review of an objection or request for hearing, the Commission determines that the regulation should be modified or revoked, the Commission will promptly take such action by notice in the **Federal Register**. Further objections to or requests for hearing on the modification or revocation may be submitted under §§ 1502.5 and 1502.6, but no further issue may be taken with other provisions in the regulation. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§ 1502.10 Denial of hearing in whole or in part.

(a) If the Commission determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published in the **Federal Register**.

(b) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by § 1502.13, and will specify the objections and requests for hearing that have been granted and denied.

(c) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(d) The notice will confirm, modify, or stay the effective date of the regulation involved.

(e) The record of the administrative proceeding relating to denial in whole or in part of a public hearing on an objection or request for hearing consists of the following:

(1) The entire rulemaking record;

(2) The objections and requests for hearing filed by the Office of the Secretary; and

(3) The notice denying a formal evidentiary public hearing.

(f) The record specified in paragraph (e) of this section is the exclusive record for the Commission's decision on the complete or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commission's decision denying a hearing, unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration or a petition for stay of the Commission's action. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commission with a petition to modify the final regulation.

(g) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the **Federal Register**.

(1) Before requesting a court for a stay of the Commission's action pending judicial review, a person shall first submit a petition to the Commission for a stay of action.

(2) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the **Federal Register**. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

§ 1502.11 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 1502.5(a) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 1502.6(a)(4).

(b) If a person waives the right to a hearing, the Commission will rule upon the person's objections under §§ 1502.8 through 1502.10. As a matter of discretion, the Commission may also order a hearing on the matter.

(c) If the Commission rules adversely on a person's objection, the person may petition for judicial review in a U.S. court of appeals under the appropriate statute.

(1) The record for judicial review is the record designated in § 1502.10(e).

(2) The time for filing a petition for judicial review begins on the date of publication of the Commission's ruling on the objections in the **Federal Register**.

§ 1502.12 Request for alternative form of hearing.

(a) A person with a right to request a formal hearing may waive that right and request a hearing before the Commission under 16 CFR part 1052.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commission;

(2) Must be submitted by the person in the form of a petition before publication of a notice of hearing under § 1502.13 or a denial of hearing under § 1502.10; and

(3) Must be—

(i) In lieu of a request for a formal hearing under § 1502.5; or,

(ii) If submitted with or after a request for formal hearing, accompanied by a waiver of the right to a formal hearing, conditioned on the request for the alternative form of hearing. Upon acceptance by the Commission, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing, unless the Commission determines otherwise.

(c) When more than one person requests and justifies a formal hearing under these procedures, an alternative form of hearing may be used only if all the persons concur and waive their right to request a formal hearing.

(d) The Commission will determine whether an alternative form of hearing should be used after considering the requests submitted and the appropriateness of the alternative hearing for the issues raised in the objections. The Commission's determination is binding unless, for good cause, the Commission subsequently determines otherwise.

(e) If the Commission determines that an alternative form of hearing will be used, the Commission will publish a notice in the **Federal Register** setting forth the following information:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation that has been stayed by operation of law or in the Commission's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

§ 1502.13 Notice of hearing; stay of action.

(a) If the Commission determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commission will publish a notice setting forth the following:

(1) A description of the regulation that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commission's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 1502.10.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 1502.16.

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 1502.16(a).

(9) The time within which participants should submit written information and views under § 1502.25(b). Additional copies of material already submitted under § 1502.25 need not be included with any later submissions.

(10) The contents of the portions of the administrative record relevant to the issues at the hearing. Except for trade secret or other confidential information, the disclosure of which is prohibited by statute, the portions listed will be placed on public display in the Office of the Secretary before the notice is published.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commission of a decision by the presiding officer to revise the issues to include an issue on which the Commission has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 1502.14 Effective date of a regulation when no objections are filed.

(a) If no objections are filed and no hearing is requested on a regulation under § 1502.5, the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commission shall publish a confirmation of the effective date of the regulation. The **Federal Register** document confirming the effective date of the regulation may extend the time for compliance with the regulation.

Subpart C—Appearance and Participation

§ 1502.15 Appearance.

(a) A person who has filed a notice of participation under § 1502.16 may appear in person or by counsel or other representative in any hearing and, subject to § 1502.27, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the requirements regarding conduct in § 1502.28.

§ 1502.16 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 1502.13, a person desiring to participate in a hearing is to file with the Office of the Secretary a notice of participation in the following form:

(Date)

Office of the Secretary, Consumer Product Safety Commission, Room 420, 5401 Westbard Ave., Bethesda, MD. Mailing address: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Notice of Participation

(Title of Regulation)

Docket No. _____

Please enter the participation of:

(Name) _____

(Street address) _____

(City, State, and Zip Code) _____

(Telephone number) _____

Service on the above will be accepted by:

(Name) _____

(City, State, and Zip Code) _____

(Telephone number) _____

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of § 1502.25 of these procedures.)

(Signed) _____

(b) Any amendment to a notice of participation should be filed with the Office of the Secretary and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or for failure to comply with any requirement of this subpart, *e.g.,* disclosure of information as required by § 1502.25 or the prehearing order issued under § 1502.30. Any person whose participation is stricken may petition the Commission for interlocutory review of that decision.

§ 1502.17 Advice on public participation in hearings.

(a) All inquiries from the public about scheduling, location, and general procedures should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or telephone (301) 492–6800.

(b) Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the presiding officer.

(c) Under no circumstances will the Office of the General Counsel of CPSC directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the staff. Other members of the office, ordinarily including the General Counsel, are designated to advise the Commission on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the General Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commission to respond to inquiries from other participants in the hearing; such participants may be urging views contrary to those of the staff involved or to what may ultimately be the final conclusions of the Commission. Accordingly, members of the Office of the General Counsel, other than the attorneys responsible for representing the staff, will not answer questions about the hearing from any participant or potential participant.

(d) Participants in a hearing may communicate with the attorneys responsible for representing the staff, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Office of the Secretary.

(e) Separation of functions and *ex parte* communications will be handled as follows.

(1) An interested person may meet or correspond with any CPSC representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing on the matter. The provisions of 16 CFR part 1012 apply to such meetings.

(2) Upon publication of a notice announcing a formal evidentiary public hearing, the following rules concerning separation of functions apply:

(i) The CPSC staff members responsible for preparing evidence and participating in the hearing in the matter are, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the staff at the hearing and in any pleading or oral argument before the Commission. These representatives of the staff may not participate or advise in any decision except as witnesses or counsel in public proceedings. Except as provided herein, there shall be no other communication between representatives of the staff and representatives of the various Commissioners' offices concerning the matter prior to the decision of the Commission. The Commission may, however, designate other representatives of the staff to advise the Commission. The designation will be in writing and filed with the Office of the Secretary no later than the time specified in paragraph (f)(2) of this section for the application of separation of functions. All employees of the CPSC other than representatives of the involved staff (except for those specifically designated otherwise) may be called upon to advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(ii) The General Counsel of CPSC shall designate members of the Office of the General Counsel to advise and participate with the staff in its functions in the hearing and shall designate other members of the Office of the General Counsel to advise the offices of the Commissioners in their functions related to the hearing and the final decision. The members of the Office of the General Counsel designated to advise the staff may not participate or advise in any decision of the Commission except as counsel in public proceedings. The designation shall be in the form of a memorandum filed with the Office of the Secretary and made a part of the administrative record in the proceeding. There may be no other communication between those members of the Office of the General Counsel designated to advise the offices of the Commissioners and any other person in the Office of the General Counsel or in the involved staff with respect to the matter prior to the decision of the Commission. The General Counsel may assign different attorneys to advise either the staff or the offices of the Commissioners at any stage of the proceedings. The General Counsel will ordinarily advise and participate with the offices of the Commissioners in their functions relating to the hearing and the final decision.

(iii) The Commissioners are responsible for the agency review and final decision of the matter, with the advice and participation of anyone in CPSC other than representatives of the responsible staff and those members of the Office of the General Counsel designated to assist in the staff functions in the hearing.

(iv) Between the date that separation of functions applies and the date of the Commission's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(A) No person outside CPSC may have an *ex parte* communication with the presiding officer or any person representing the offices of the Commissioners concerning the matter in

the hearing. Neither the presiding officer nor any person representing the offices of the Commissioners may have any *ex parte* communications with a person outside CPSC concerning the matter in the hearing. All communications are to be public communications, as witness or counsel under the applicable procedures.

(B) A participant in the hearing may submit a written communication concerning a proposal for settlement to the presiding officer with a request that it be transmitted to the Commission. These communications are to be in the form of pleadings, served on all other participants, and filed with the Office of the Secretary like any other pleading.

(C) A written communication contrary to this section must be immediately served on all other participants and filed with the Office of the Secretary by the presiding officer at the hearing, or by the Commissioner, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other participants and filed with the Office of the Secretary. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the Office of the Secretary.

(D) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

Subpart D—Presiding Officer

§ 1502.18 Presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105.

§ 1502.19 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 1502.20 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 1502.30(b) and to rule on the need for oral testimony and cross-examination under § 1502.26(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike or limit their testimony if they fail to respond fully to proper questions;

(h) Admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 1502.31;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any procedure in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 1502.16(e) or exclude any person from the hearing under § 1502.28, or take other reasonable disciplinary action; and

(o) Take any other action required for the fair, expeditious, and orderly conduct of the hearing.

§ 1502.21 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with § 1502.35(b).

(b) A presiding officer who is aware of grounds for disqualification, whether or not raised by a participant, shall withdraw from the proceeding.

§ 1502.22 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commission will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 1502.23 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the Office of the Secretary. Two copies shall be filed. To determine compliance with filing deadlines in a hearing, a submission is considered filed on the day of filing with or mailing to the Office of the Secretary. When this part allows a response to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) The person making a submission shall serve copies of it on the other participants.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service or by a statement that service is not required, stating the reason therefor.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 1502.3.

§ 1502.24 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commission a petition to participate *in forma pauperis.*

(b) The petition will be captioned: "Request to Participate *In Forma Pauperis,* Docket No. ———." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted; The petition must demonstrate that either:

(1) The participant is indigent and a strong public interest justifies participation, or

(2) The participant's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commission may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the Office of the Secretary. The Office of the Secretary will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 1502.25 Disclosure of data and information to be relied on by the participants.

(a) Before the notice of hearing is published under § 1502.13, the Assistant General Counsel for Regulatory Affairs shall submit the following to the Office of the Secretary:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not required to be submitted.

(2) All other documentary data and information relied upon.

(3) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the Assistant General Counsel intends to introduce.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the Office of the Secretary all data and information specified in paragraph (a) (2) and (3) of this section and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete, and any documents in the participants' files containing factual information, whether favorable or unfavorable to the regulation issued by the Commission, which relates to the issues involved in the hearing.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material in the supplement was not reasonably known or available when the submission was made, that the relevance of the material contained in the supplement could not reasonably have been foreseen, or that admission of the material in the supplement is necessary for a fair determination of the issues involved in the hearing.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 1502.26 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) Direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the extent to which, each wishes to present direct testimony orally or in writing.

(2) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(3) Witnesses shall give testimony under oath.

(c) A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

§ 1502.27 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories; or

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same right as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 1502.28 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing shall constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 1502.29 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At the prehearing conference, insofar as practicable at that time, the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination, if leave to conduct oral examination is granted on any issue.

§ 1502.30 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and should request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that reasonably could be anticipated and resolved at that time will not delay the progress of the hearing and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements

reached, actions taken, or rulings issued by the presiding officer at or as a result of the prehearing conference and may be grounds for striking the participation under § 1502.16.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the Office of the Secretary under § 1502.23:

(i) Any additional information desired to supplement the submission filed under § 1502.25; the supplement may be filed if approved under § 1502.25.

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may be identified later, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference, that the relevance of the witness's views could not reasonably have been foreseen at that time, or for other good cause shown, as where a previously identified witness is unforeseeably unable to testify.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(A) The statement is available without making a request to the witness;

(B) The statement relates to the subject matter of the witness's testimony; and

(C) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions, subject to the *ex parte* limitations in § 1502.17(f).

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider, but is not limited to, the following techniques.

(i) Submission of narrative statements of position on factual issues in controversy.

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports.

(iii) Exchange of written interrogatories directed to particular witnesses.

(iv) Written requests for the production of additional documentation, data, or other relevant information.

(v) Submission of written questions to be asked by the presiding officer of a specific witness.

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting information submitted under § 1502.25 into evidence.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 1502.31 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, allow additional time to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant submitting or opposing a motion for summary decision may obtain interlocutory review by the Commission of a summary decision of the presiding officer.

§ 1502.32 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, written interrogatories and responses, and any other written material submitted in the proceeding comprise the administrative record of the hearing, and will be promptly placed on public display in the Office of the Secretary, except as ordered by the presiding officer.

(c) Written evidence, identified as such, is admissible unless a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by § 1502.25.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted

in the form of a cross-reference to the documents filed under § 1502.25.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevant, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of these procedures.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commission, without taking oral exception at the hearing. Upon review, the Commission may reopen the hearing to permit the evidence to be admitted if the Commission determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating only to trade secrets and privileged or confidential commercial or financial information. Participation in closed proceedings will be limited to the witness, the witness's counsel, and Federal Government employees.

§ 1502.33 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of CPSC as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 1502.34 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument shall refrain from disclosing specific details of written and oral testimony and documents relating to trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

§ 1502.35 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 1502.13(b), 1502.16(e), 1502.31(f), and 1502.37(d) authorizing interlocutory appeals, rulings of the presiding officer may not be appealed to the Commission before the Commission's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commission if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant or substantial harm to the public interest.

(c) When an interlocutory appeal is made to the Commission, a participant may file a brief with the Commission only if such is specifically authorized by the presiding officer or the Commission, and, if such authorization is granted, within the period the Commission directs. If a participant is authorized to file a brief, any other participant may file a brief in opposition, within the period the Commission directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commission. The oral argument will be transcribed. If briefs are authorized, oral argument will be heard only at the discretion of the Commission.

§ 1502.36 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the Office of the Secretary upon receipt.

(c) Copies of the transcript may be obtained by application to the official reporter and payment of costs thereof.

(d) Witnesses, participants, and counsel have 30 days from the time the transcript becomes available to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 1502.37 Motions.

(a) Except for a motion made in the course of an oral hearing before the presiding officer, a motion on any matter relating to the proceeding shall be filed under § 1502.23 and must include a draft order.

(b) A response may be filed within 10 days of service of a motion. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commission for interlocutory review.

Subpart F—Administrative Record

§ 1502.38 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed with the Office of the Secretary under §§ 1502.5 and 1502.6;

(3) The notice of hearing published under § 1502.13;

(4) All notices of participation filed under § 1502.16;

(5) All **Federal Register** notices pertinent to the proceeding;

(6) All submissions filed under § 1502.24, *e.g.*, the submissions required by § 1502.25, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under § 1502.30;

(8) All documents relating to any motion for summary decision under § 1502.31;

(9) All documents of which official notice is taken under § 1502.33;

(10) All pleadings filed under § 1502.34;

(11) All documents relating to any interlocutory appeal under § 1502.35;

(12) All transcripts prepared under § 1502.36; and

(13) Any other document relating to the hearing and filed with the Office of the Secretary by the presiding officer or any participant.

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in § 1502.34(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

§ 1502.39 Examination of record.

Except as provided in § 1502.3, documents in the record will be publicly available. Documents available for examination or copying will be placed on public display in the Office of the Secretary promptly upon receipt in that office.

Subpart G—Initial and Final Decision

§ 1502.40 Initial decision.

(a) The presiding officer shall prepare and file an initial decision as soon as practicable after the filing of briefs and oral argument.

(b) The initial decision shall contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation supported by substantial evidence of record and based upon the findings of fact and conclusions of law (unless the initial decision is to not issue a regulation);

(6) An effective date for the regulation (if any), together with an explanation of why the effective date is appropriate; and

(7) The periods of time for filing exceptions to the initial decision with the Office of the Secretary and for filing replies to such exceptions, in accordance with § 1502.41(a)–(c).

(c) The initial decision must refrain from disclosing specific details of trade secrets and privileged or confidential commercial or financial information, except as specifically authorized in a protective order issued by the presiding officer.

(d) The initial decision is to be filed with the Office of the Secretary and served upon all participants. Once the initial decision is filed with the Office of the Secretary, the presiding officer has no further jurisdiction over the matter, and any motions or requests filed with the Office of the Secretary will be decided by the Commission.

(e) The initial decision becomes the final decision of the Commission by operation of law unless a participant files exceptions with the Office of the Secretary under § 1502.41(a) or the Commission files a notice of review under § 1502.41(f).

(f) Notice that an initial decision has become the decision of the Commission without appeal to or review by the Commission will be published in the Federal Register. The Commission also may publish the decision when it is of widespread interest.

§ 1502.41 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commission by filing exceptions with the Office of the Secretary, and serving them on the other participants within the period specified in the initial decision. The period for appeal to the Commission may not exceed 30 days, unless extended by the Commission under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commission may be requested in the exceptions.

(c) Any reply to the exceptions shall be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Commission under paragraph (d) of this section.

(d) The Commission may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commission decides to hear oral argument, the participants will be informed of the date, time, and place of the argument, the amount of time allotted to each participant, and the issues to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commission may file with the Office of the Secretary, and serve on the participants, a notice of the Commission's determination to review the initial decision. The Commission may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 1502.42 Decision by Commission on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commission has all the powers given to the presiding officer with respect to the initial decision. On the Commission's own initiative or on motion, the Commission may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues at the public hearing is the same as the scope of the issues on appeal at the public hearing unless the Commission specifies otherwise.

(c) As soon as possible after the filing of briefs and the presentation of any oral argument, the Commission will issue a final decision in the proceeding, which meets the requirements established in § 1502.40 (b) and (c).

(d) The Commission may adopt the initial decision as the final decision.

(e) Notice of the Commission's decision will be published in the Federal Register. The Commission may also publish the decision when it is of widespread interest.

§ 1502.43 Reconsideration and stay of Commission's action.

Following notice or publication of the final decision, a participant may petition the Commission for reconsideration of any part or all of the decision or may petition for a stay of the decision.

Subpart H—Judicial Review

§ 1502.44 Review by the courts.

(a) The Commission's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of the Commission's action pending judicial review, a participant shall first submit a petition for a stay of action under § 1502.43.

(b) Under 28 U.S.C. 2112(a), CPSC will request consolidation of all petitions related to a particular matter.

§ 1502.45 Copies of petitions for judicial review.

The General Counsel of CPSC has been designated by the Commission as the officer on whom copies of petitions for judicial review are to be served. This

officer is responsible for filing the record on which the final decision is based. The record of the proceeding is certified by the Secretary of the Commission.

Dated: February 22, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-4915 Filed 3-5-91; 8:45 am]

BILLING CODE 6355-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Privacy Act

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This rule updates the list of published system of records notices. Section 1301.24 is amended to reflect the change of the name of the "Cooperative Training Program for Construction Craftsmen-TVA" system of records to "Upgrade Craft Training Program-TVA."

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, TVA Privacy Act Officer, (615) 751-2520.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to agency practice. Since this rule is nonsubstantive, it is being made effective immediately. (March 6, 1991).

List of Subjects in 18 CFR Part 1301

Administrative practice and procedure, Freedom of Information, Privacy Act, Sunshine Act.

For the reasons set forth in the preamble, title 18, chapter XIII of the Code of Federal Regulations is amended as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 continues to read as follows:

Authority: 48 Stat. 58, as amended; 16 U.S.C. 831-831dd, unless otherwise noted.

2. Section 1301.12 is amended by revising paragraph (d) to read as follows:

§ 1301.12 Definitions.

* * * * *

(d) The term "TVA system notice" means a notice of a TVA system published in the **Federal Register** pursuant to the Act. TVA has published TVA system notices about the following TVA systems:

Apprentice Training Record System-TVA
Personnel Files-TVA
Upgrade Craft Training Program-TVA
Demonstration Farm Records-TVA
Discrimination Complaint Files-TVA
Employee Accident Information System-TVA
Employee Accounts Receivable-TVA
Employee Alleged Misconduct Investigatory Files-TVA
Medical Record System-TVA
Employee Statement of Employment and Financial Interests-TVA
Payroll Records-TVA
Travel History Records-TVA
Employment Applicant Files-TVA
Grievance Records-TVA
LAND BETWEEN THE LAKES® Hunter Records-TVA
LAND BETWEEN THE LAKES® Register of Law Violations-TVA
Employee Supplementary Vacancy Announcement Records-TVA
Consultant and Personal Service Contractor Records-TVA
Nuclear Quality Assurance Personnel Records-TVA
Questionnaire—Farms in Vicinity of Proposed or Licensed Nuclear Power Plant-TVA
Radiation Dosimetry Personnel Monitoring Records-TVA
Retirement System Records-TVA
Test Demonstration Farm Records-TVA
Woodland Resource Analysis Program Input Data-TVA
Electricity Use, Rate, and Service Study Records-TVA
LAND BETWEEN THE LAKES® Mailing Lists-TVA
OIG Investigative Records-TVA
Call Detail Records-TVA
Office of Nuclear Power Call Detail Records-TVA
Project/Tract Files-TVA
Building Access Security Records-TVA

* * * * *

3. Section 1301.24 is amended by revising the first sentences of paragraphs (b)(1) and (c)(1) to read as follows:

§ 1301.24 Specific exemptions.

* * * * *

(b)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," "Personnel Files-TVA," and "Nuclear Quality Assurance Personnel Records-TVA" are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

* * *

* * * * *

(c)(1) The TVA systems "Apprentice Training Record System-TVA," "Consultant and Personal Service Contractor Records-TVA," "Upgrade Craft Training Program-TVA," "Employment Applicant Files-TVA," and "Personnel Files-TVA," are exempted from subsections (d); (e)(4)(H); (f)(2), (3), and (4) of 5 U.S.C. 552a and corresponding sections of these rules to the extent that disclosure of testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service would compromise the objectivity or fairness of the testing or examination process. * * *

* * * * *

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-5183 Filed 3-5-91; 8:45 am]

BILLING CODE 8120-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 90-063]

Realignment of Marine Inspection Zones and Captain of the Port Zones for Western Alaska and Prince William Sound, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting an administrative error in a final rule that appeared in the **Federal Register** on Wednesday, December 19, 1990 (CGD 90-063), and another such error in a subsequent correction document that appeared in the **Federal Register** on Tuesday, January 22, 1991 (CGD 90-063 also).

FOR FURTHER INFORMATION CONTACT:

Lieutenant James H. McDowell, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

Corrections

1. In FR Document 90-29637, beginning on page 52046 in the issue of Wednesday, December 19, 1990, make the following correction:

On page 52046, in the second column, in the heading, remove "RIN 2115–AD65".

2. In FR Document 91–1372, beginning on page 2134 in the issue of Tuesday, January 22, 1991, make the following correction:

On page 2134, in the first column, in the heading, remove "RIN 2115–AD65".

Dated: February 28, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91–5254 Filed 3–5–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR 165

[CGD1 91–009]

Security Zone Regulations: Upper Bay and Lower Bay of New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone around vessels involved in the logistical support of "Operation Desert Storm" as they transit, anchor or moor in the Upper Bay or Lower Bay of New York and New Jersey. This zone is needed to safeguard personnel and property against sabotage or other subversive acts, accidents, or other causes of similar nature. Entry into or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 07:01 a.m. local time on 28 February 1991. It terminates at 07:00 a.m. on 31 May 1991 unless terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: LTJG C.W. Jennings of Captain of the Port, New York (212) 668–7737.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication.

Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction to government property or loss of life.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port, New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from ongoing activities in the Upper Bay and Lower Bay of New York and New Jersey in support of "Operation Desert Storm". These activities include but are not limited to the storage, loading and transport of military cargoes and/or personnel on vessels chartered by or wholly owned by the United States.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. A new § 165.T1009 is added to read as follows:

§ 165.T1009 Security Zone: Upper Bay of New York Harbor.

(a) *Location.* The following areas are established as a Security Zone during the conditions specified:

(1) That portion of the Upper Bay of New York Harbor within the waters bound by a line drawn from the northeast corner of Global Marine Terminal, Bayonne, New Jersey thence east southeast to the Gowanus Flats Lighted Gong Buoy 27 (LLN 32295) thence south southwest to the Kill Van Kull Lighted Junction Buoy "KV" (LLN 34505) thence west northwest to Exxon Pier 7 at Constable Hook, Bayonne, New Jersey thence northerly along the shoreline to the point of origin. This zone will be active during the loading, unloading, storage, embarkation or disembarkation of military cargoes or personnel to or from vessels being operated in support of "Operation Desert Storm".

(2) The waters of the Upper Bay and Lower Bay of New York and New Jersey within 500 yards fore and aft, and 200 yards port and starboard of any vessel involved in support activities for "Operation Desert Storm" as it transits those waters.

(3) The waters of the Upper Bay and Lower Bay of New York and New Jersey within a 500 yard radius of any vessel involved in support activities for "Operation Desert Storm" as it lies at anchor in those waters.

(b) *Effective dates.* This regulation becomes effective at 07:01 a.m. local time 28 February 1991. It terminates at 07:00 a.m. on 31 May 1991 unless terminated sooner by the Captain of the Port, New York. The Captain of the Port will notify the maritime community of the periods during which the areas described in this security zone will be active by providing advance notice via a Marine Safety Information Radio Broadcast. Subsequent broadcasts will also be published for the duration of the zone.

(c) *Regulations.* In accordance with the general regulations in Section 165.33 of this part, entry into or movement within these zones is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements. Representatives of the Captain of the Port will be on scene to enforce the areas described in this zone during their activation.

Dated: February 15, 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91–5255 Filed 3–5–91; 8:45 am]

BILLING CODE 4910–14–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 14]

RIN 3090–AD88

Federal Travel Regulation; Relocation Income Tax Allowance

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: Certain States do not allow the deduction of all or part of the moving expenses that are deductible for Federal income tax purposes. This rule implements new procedures to be used in calculating the relocation income tax (RIT) allowance payable to employees for the additional income taxes they incur when one of those States is the taxing jurisdiction. This rule also updates the examples in the RIT allowance regulation to reflect current Federal income tax rates and removes Figures 302–11(a) and 302–11(b) which are unnecessary and may cause confusion.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Clauson, Travel Management

Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: Certain States do not allow deduction of all or part of the moving expenses that are deductible for Federal income tax purposes. As a consequence, relocated Federal Government employees are incurring additional State income taxes when filing tax returns in those States. Current RIT allowance procedures do not provide for the reimbursement of these additional taxes. To rectify the inequity to Federal Government employees relocating to those States, new RIT allowance procedures have been developed to provide for the reimbursement of the additional income taxes.

The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 12747); E.O. 12466, February 27, 1984 (49 FR 7349).

2. Section 302–11.5 is amended by revising paragraphs (i) and (k), and by adding new paragraphs (o) and (p) to read as follows:

§ 302–11.5 Definitions and discussion of terms.

* * * * *

(i) *Marginal tax rate (MTR).* The tax rate (for example, 33 percent) applicable to a specific increment of income. The Federal and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices A, B, and C of this part. (See § 302–11.8(e)(3) for instructions on local marginal tax rate determinations)

* * * * *

(k) *Gross-up.* Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302–11.3.

* * * * *

(o) *State gross-up.* Payment for the estimated additional State income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expenses listed in § 302–11.3 that are deductible for Federal income tax but not for State income tax purposes.

(p) *State gross-up formula.* The formula prescribed in § 302–11.8(f)(3) to be used in determining the amount to be included in the RIT allowance to compensate an employee for the additional State income tax incurred in States that do not allow the deduction of moving expenses.

§ 302–11.7 [Amended]

3. Section 302–11.7(e)(2) is amended by removing the reference "§ 302–11.8(f)(4)" and adding in its place "§ 302–11.8(f)(5)".

4. Section 302–11.8 is amended by revising paragraphs (b)(1)(iii) and (c)(3); by removing paragraph (c)(6); by revising paragraphs (e)(1), (e)(2)(iii), (e)(4)(i) (A) through (C), and (f) (1) and (2); by redesignating paragraphs (f) (3) through (5) as paragraphs (f) (4) through (6) and adding a new paragraph (f)(3); and by removing paragraph (h) to read as follows:

§ 302–11.8 Rules and procedures for determining the RIT allowance in Year 2.

* * * * *

(b) * * *

(1) * * *

(iii) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1 (and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform Act of 1986 substantially changed the Federal tax structure making it necessary to compute a separate CMTR for Year 1 and for Year 2. (See paragraph (e) of this section.) The formula for calculating the RIT allowance to be paid in 1988 and subsequent years is shown in paragraph (f) of this section. It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for Year 2

* * * * *

(c) * * *

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations, the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbusement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1989 and an additional $1,000 for temporary quarters in 1990, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1989, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1989 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1989. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1989) will be used to offset the $1,000 temporary quarters reimbursement in 1990 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1990.

* * * * *

(e) * * *

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under paragraph (d) of this section and contained in the certified statement by the employee (or employee

and spouse) on the RIT allowance claim, and applying the prescribed Federal tax tables contained in appendices A and C of this part 302–11. For example, if the income level for the 1989 tax year (Year 1) was $84,100 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 33 percent for Year 1 (1989) (see appendix A of this part 302–11) and 28 percent for Year 2 (1990) (see appendix C of this part 302–11). These rates would be used regardless of how much of the $84,100 was attributable to reimbursement for the employee's relocation expenses.

Note: These marginal rates are different from the withholding tax rate used for WTA.

If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices A and C of this part are the CMTR's to be used in the RIT gross-up formula provided in § 302–11.8(f). In such cases, the provisions of paragraphs (e) (2) and (3) of this section do not apply.

(2) * * *

(iii) The prescribed State marginal tax rates generally are expressed as a percent of taxable income. However, if the applicable State marginal tax rate is stated as a percentage of the Federal income tax liability, the State tax rate must be converted to a percent of taxable income to be used in the CMTR formulas in paragraph (e)(4) of this section. This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 33 percent for Year 1 and the State tax rate is 25 percent of the Federal income tax liability, the State tax rate stated as a percent of taxable income would be 8.25 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

* * * * *

(4) * * *

(i) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X = F + (1 - F)S + (1 - F)L$

Where:
X = CMTR for Year 1
F = Federal tax rate for Year 1
S = State tax rate for Year 1
L = local tax rate for Year 1

(A) *Federal, State, and local taxes incurred.* If the employee incurs Federal, State, and local income taxes on moving expense reimbursements, the CMTR formla may be solved as follows:

Example:

If:

F=33 percent of income
S=6 percent of income
L=3 percent of income

Then:

X=.33+(1.00−.33).06+(1.00−.33).03
X=.3903

(B) *Federal and State income taxes only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income taxes but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example:

If:

F=33 percent of income
S=6 percent of income
L=Zero

Then:

X=.33+(1.00−.33).06
X=.3702

(C) *Federal and local income taxes only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income taxes but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example:

If:

F=33 percent of income
S=Zero
L=3 percent of income

Then:

X=.33+(1.00−.33).03
X=.3501

* * * * *

(f) *Determination of the RIT allowance.* The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1, the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as folows:

Formula:

$$Z = \frac{X}{1-W}(R) - \frac{1-X}{1-W}(Y)$$

Where:
Z=RIT allowance payable in Year 2
X=CMTR for Year 1
W=CMTR for Year 2
R=covered taxable reimbursements
Y=total WTA's paid in Year 1

Example:

If:

X=.3903
W=.3448
R=$21,800
Y=$5,450

Then:

$$Z = \frac{.3903}{1.00-.3448}(\$21{,}800) - \frac{1.00-.3903}{1.00-.3448}(\$5{,}450)$$

Z=.5957 ($21,800)−.9308 ($5,450)
Z=$12,986.26−$5,071.77
Z=$7,914.49

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in paragraph (f)(1) of this section for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example:

If:

X=.3903
W=.3448
R=$21,800
Y=Zero

Then:

$$Z = \frac{.3903}{1.00-.3448}(\$21{,}800)$$

Z=.5957 ($21,800)

Z=$12,986.26

(3) Certain States do not allow the deduction of all or part of the covered moving expenses that are deductible for Federal income tax purposes. The State gross-up to cover the additional State income tax liability resulting from the covered moving expense reimbursements received in Year 1 that are deductible for Federal income tax purposes but not for State income tax purposes is calculated in Year 2 as follows:

(i) The State gross-up is calculated by substituting the amount of covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes, the Federal tax rate for Year 1, the State tax rate for Year 1, and the combined marginal tax rate for Year 2 into the State gross-up formula as follows:

Formula:

$$A = \frac{S(1-F)}{1-W}N$$

Where:

A=State gross-up
F=Federal tax rate for Year 1
S=State tax rate for Year 1
W=CMTR for Year 2
N=covered moving expense reimbursements that are deductible for Federal income tax purposes but not for State income tax purposes

Example:

If:

F=.33
S=.06
W=.3448
N=$9,250

Then:

$$A = \frac{.06(1-.33)}{1-.3448}\$9,250$$

A=.0614 ($9,250)
A=$567.95

(ii) Add the State gross-up to the RIT allowance amount as calculated using the formula in paragraph (f)(1) of this section. The result is the RIT allowance adjusted for those States that do not allow moving expense deductions.

Example:

RIT allowance payable in Year 1...	$7,914.49
Plus adjustment factor.....	+567.95
Total.....	8,482.44

* * * * *

§ 302-11.9 [Amended]

5. Section 302-11.9(b)(3) is amended by removing the reference "§ 302-11.8(f)(4)" and adding in its place "§ 302-11.8(f)(5)".

Figure 302-11(a)—Illustration of Calculation of Covered Taxable Reimbursements in Year 2 [Removed]

6. Figure 302-11(a) is removed.

Figure 302-11(b)—Summary of RIT Allowance Procedures [Removed]

7. Figure 302-11(b) is removed.

Dated: January 23, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-5185 Filed 3-5-91; 8:45 am]

BILLING CODE 6820-24-M

Proposed Rules

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 704 and 1410

Agricultural Resources Conservation Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agricultural, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the Food Security Act of 1985 with respect to the statutory provisions of the Conservation Reserve Program. The purpose of this proposed rule is to set forth the terms and conditions of the revised Conservation Reserve Program (CRP) for enrollment during 1991 through 1995. This proposed rule would set forth the CRP for 1991 through 1995 in a separate part (7 CFR part 1410) and the existing regulations (7 CFR part 704) will continue to be applicable to existing CRP contracts.

DATES: Comments must be received on or before March 21, 1991, in order to be assured of consideration.

ADDRESSES: Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013. Phone (202) 447-6221.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512-1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more. However, (1) no major increase in costs or prices for consumers, individual industries, State or local agencies, or geographic regions, or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets will result upon implementation of these provisions. A preliminary regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have any significant adverse impact on the quality of the human environment.

Therefore, an environmental impact statement is not needed. Draft copies of the findings of no significant impact are available upon written request.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal Domestic Assistance Program to which this rule applies are: Title, Conservation Reserve Program; Number 10.069, as found in the catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in the current regulations at 7 CFR part 704 under provisions of 44 U.S.C. chapter 33 and OMB number 0560-0125 has been assigned.

The information collection requirements of the proposed rule at 7 CFR 1410 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980.

Public reporting burden for the information collections contained in these regulations are estimated to vary from 3 minutes to 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested with respect to this proposed rule and such comments shall be considered in issuing the final rule.

Discussion of Changes

Provisions for the Conservation Reserve Program (CRP) were made in the Food Security Act of 1985 ("1985 Act"). Thirty-four million acres of land were enrolled in the CRP prior to the passage of the 1990 Act. In the CRP, the Commodity Credit Corporation (CCC) has entered into 10-year voluntary contracts with the owner and operators of highly erodible and other sensitive cropland to convert land to a vegetative cover for 10 years and in return CCC makes annual rental payments and cost-share assistance for the establishment of permanent vegetative cover and other approved conservation practices.

The 1990 Act creates an umbrella program, the Environmental Conservation Acreage Reserve Program (ECARP), made up of the CRP and the Wetland Reserve Program (WRP).

It is proposed that this part be organized into three subparts. Subpart A will provide general provisions that are applicable to both CRP and WRP. Subpart B will provide regulations governing operation of CRP and subpart C will provide WRP regulations. This proposed rule contains only Subparts A and B. Subpart C will be proposed at a later date.

For ECARP, the 1990 Act sets a total enrollment target of 40-45 million acres to be achieved by the end of 1995, of which approximately 34 million acres are the existing CRP acres. Up to 1 million acres may be enrolled in the WRP. The 1990 Act reserves 1 million CRP acres for each of the years 1994 and 1995.

The 1990 Act does not change the basic nature of the CRP. However, title XIV of the 1990 Act contains a number of new or revised CRP provisions.

With respect to land eligibility, section 1432 of the 1990 Act provides that the following lands may be considered by the Secretary to be

eligible for the program: (1) Highly erodible cropland where the productivity of the land is substantially diminished or the land cannot be farmed under a conservation plan required by the conservation compliance ("sodbuster") provisions of the 1985 Act; (2) certain marginal pasture lands; (3) cropland which, if left in production, would pose a water quality threat; (4) newly created permanent grass waterways or contour grass sod strips established and maintained as part of an approved conservation plan; (5) land to be devoted to living snowfences, permanent wildlife habitat, windbreaks, shelterbelts, or filter strips, provided an easement is created for the useful life of the practice; and (6) lands that pose an off-farm environmental threat, or threat of continued degradation of productivity due to soil salinity, if such lands remain in production. It is proposed in § 1410.103 that all of the above classes of land, except marginal pasture lands, be eligible for CRP.

Section 1432 of the Act specifically provides that the Secretary may offer contracts for 10–15 years. However, for new contracts planted to hardwood trees, shelterbelts, windbreaks or wildlife corridors, the choice, within the 10–15 year range, will be made by the participant. Also for existing CRP contracts where the existing CRP cover will, with the approval of CCC, be converted to those practices, the participant may elect to extend the term of the contract to not exceed a total of 15 years. Otherwise, contracts will be 10 years in duration, as proposed in § 1410.104.

Section 1432 of the Act states that upon application of a state agency, the Secretary shall designate areas such as the Chesapeake Bay Region and other areas of special environmental sensitivity as priority areas for the CRP in which the Secretary will attempt to maximize program enrollment. Section 1410.105 is proposed to implement this provision.

In addition, the Secretary has discretionary authority, provided in section 1434 of the 1990 Act, to give priority to bids based on environmental benefit and by region to the extent that water quality, wildlife conditions, or abatement of erosion may be accomplished. Section 1410.114 proposes to implement this authority as determined necessary by CCC to meet the goals of CRP.

The 1985 and 1990 Acts provide that eligible land must be cropland in order to be entered in the program. It is proposed in § 1410.103 that beginning in 1991 proof of cropland status will require that the land be planted to an agricultural commodity in 2 of the 5 years immediately preceding 1991. An "agricultural commodity" has been defined in § 1410.3, as any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary.

The 1990 Act provides, in addition, that land shall be considered planted to an agricultural commodity during a crop year if an action of the Secretary prevented land from being planted to the commodity during the crop year. The definition of "agricultural commodity" found at § 1410.3 proposes to incorporate this provision.

The 1985 Act required that participants establish approved vegetative cover on contracted land. Section 1433 of the 1990 Act provides, in addition to vegetative cover, that water cover for the enhancement of wildlife may also be an approved cover on contracted land. The 1990 Act also provides that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes. Section 1410.112 is proposed to implement this provision.

Section 1433 of the 1990 Act requires, for the duration of new contracts, that the participant must agree that for any highly erodible land acquired after November 28, 1990 the participant may not grow an agricultural commodity on such land if it does not have a history of being planted to an agricultural commodity other than a forage crop. This restriction will limit, in some cases, the uses that new CRP participants may make of land which is not in the CRP.

Section 1410.109 would implement this provision and provides, too, and that for purposes of determining the history of agricultural commodity production, the most recent 5 year period be used.

The 1990 Act in section 1433 provides that alley-cropping on CRP land be allowed for CRP land planted to hardwood trees. This kind of cropping involves crop production between rows of trees. If this authority is exercised, the Act provides that the Secretary will permit participation through bids in which the applicant must offer to accept at least a 50 percent reduction in the CRP annual rental payment. The actual reduction in rental payment will be determined by CCC, based upon criteria, such as the percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping. Section 1410.106 proposes authority in order to implement this provision.

The 1990 Act provides that cost-shares at the maximum 50 percent allowance for cover establishment costs be continued. In addition, however, the 1990 Act prohibits a CRP cost-share if another Federal cost-share payment has been received. It also limits the total cost-share which can be made from all sources, including non-USDA sources, to not more than 100 percent of the total establishment cost. Maintenance cost-shares are also allowed in some limited instances by the 1990 Act. Section 1410.118 and 1410.119 are proposed to implement these provisions.

Other provisions in section 1434 of the 1990 Act specifically exempt CRP payments from sequester orders under the "Gramm-Rudman-Hollings Act", require CRP payments to States involved in special CRP enhancement programs be made in cash only and that such payments to States are not subject to payment limitations. Section 1410.122 is proposed in order to implement these provisions.

The 1990 Act provides for converting CRP land already in a CRP vegetative cover to other conservation uses in some instances. Such other uses include planting hardwood trees or converting prior converted wetlands back to wetland status. Cost share assistance for the new practices is limited by the 1990 Act such that the total cost-share may not exceed the amount that would have been paid for the new practice had such practice been the original practice. It is proposed in §§ 1410.107 and 1410.108 that this provision be implemented to allow for conversion of existing CRP land to other uses.

The 1990 Act provides for the continuation of the protection of bases and allotments with respect to the CRP land if the conservation practices, by agreement, are continued beyond the end of the normal contract period. Section 1436 of the 1990 Act provides that there may not be any additional payments of any kind for such contract extension, but does permit the Secretary to authorize haying and grazing of such land in the extension period, except during any consecutive 5 month period established by the State committee beginning April 1 and ending October 31. Section 1410.117 proposes that this provision be implemented for extending base history protection.

The proposed regulations provide, that in determining acceptability of offers, the Secretary may use a formula based upon a number of environmental factors to determine the sum of environmental benefits that can be obtained from the acres of land offered for participation in the program. Seven

criteria were selected. They are: (1) Surface water quality; (2) ground water quality; (3) soil productivity; (4) conservation compliance; (5) tree planting; (6) 319 enrollment; and (7) conservation priority area enrollment. In analyzing the bid requests in order to determine total environmental benefits, ASCS proposes to use a system that would evaluate the seven criteria in such a manner as to not allow any one criteria to unduly affect bid acceptance. During the comment period, ASCS will accept comments on the criteria, their measurement and the weighting system.

As before, the CRP program will be operated by CCC through the Agricultural Stabilization and Conservation Service (ASCS) using ASCS's county and state offices. The remaining enrollment for the CRP will be limited in light of the 34 million acres already enrolled. In order to maximize the benefit for the monies to be expended, bid practices and the land for which bids may be solicited may vary as conditions change. The 1990 Act permits a continuous sign-up for land, to be converted to hardwood trees, but it is not anticipated at this time that there will be a continuous sign-up because of the difficulty of encouraging competing bids without a definite bid period.

Comments on the proposed rule are solicited from interested parties and will be considered for a period of 15 days after the date of publication of this proposed rule in the **Federal Register.**

The comment period has been limited to 15 days so that a CRP sign-up can be held in conjunction with the sign-up for other agricultural programs. Because delay would reduce producer options in this voluntary program and because there will be future sign-ups, it is determined that a longer sign-up would be contrary to the public interest. Any comments that are offered during the public comment period will be evaluated in the development of the final rule.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practice and procedure, Conservation, plan, Contracts, Technical assistance, Natural resources, Environmental indicators, and Easements.

Proposed Rule

Accordingly, Chapter VII of the Code of Federal Regulations is proposed to be amended as follows:

PART 704—[AMENDED]

1. The authority citation for 7 CFR part 704 is revised to read as follows:

Authority: 16 U.S.C. 3801, 3831–3844.

2. Tthe heading of 7 CFR part 704 is revised to read as follows:

PART 704—1986–1990 CONSERVATION RESERVE PROGRAM

3. Section 704.1 is amended by adding paragraph (c) to read as follows:

§ 704.1 General description of the program.

* * * * *

(c) The provisions of this part shall only apply to contracts or bids with respect to participation in the CRP to persons who submitted bids to enter into the program prior to November 28, 1990 and whose bids were accepted by CCC prior to that date, unless otherwise agreed to by CCC.

PART 1410—[ADDED]

4. A new Part 1410 is added to read as follows:

PART 1410—1991-95 CONSERVATION RESERVE PROGRAM

Subpart A—General Provisions

Sec.

Subpart B Conservation—Reserve Program

Authority: 16 U.S.C. 3801, 3831–3344.

Subpart A—General Provisions

§ 1410.1 Applicability.

The regulations in this part govern operation of the Environmental Conservation Acreage Reserve Program (ECARP) established by title XII of the Food Security Act of 1985. The ECARP shall consist of the Conservation Reserve Program (CRP) covered under subpart B of this part and the Wetlands Reserve Program (WRP) covered under subpart C of this part. With respect to CRP, subpart B shall, unless otherwise provided for, only be applicable for contracts approved and bids for participation offered for enrollment periods after November 28, 1990. With respect to all other CRP contracts approved and bids for participation offered, the provisions of part 704 of this title shall be applicable.

§ 1410.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred to as "State committees" and "county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is

voluntary; however, without it program benefits will not be provided.

(f)(1) The land capability class, rate of erosion, erosion index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Soil Conservation Service (SCS), except that no such determination by the SCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(2) CCC shall consult with the Soil Conservation Service (SCS) for such other technical assistance in the implementation of the ECARP as is determined by CCC to be necessary.

(g) CCC shall consult with the Forest Service (FS) or the State Forestry Agency for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice.

(h) The Extension Service (ES) may be consulted with to coordinate the related information and education program as deemed appropriate by CCC concerning implementation of the CRP.

§ 1410.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year;

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan of operation approved by the local Conservation District and CCC;

Annual rental payment means the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP;

Applicant means a person who submits an offer to CCC to enter into a CRP contract;

ASCS means the Agricultural Stabilization and Conservation Service;

Bid means the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP;

Commodity Credit Corporation (CCC) shall refer to the corporation of that name which is an agency of the United States government maintained within the U.S. Department of Agriculture;

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service;

Contour grass strip means a vegetation area that follows the contour of the land that is less than 66 feet in width which is to be designated as a contour grass strip by a conservation plan required under this part;

Conservation plan means the document describing and scheduling the practices which must be established and maintained on land placed in the CRP in order to achieve the desired environmental benefits on such land. The conservation plan includes Form SCS–CPA–11 and any addenda thereto. The plan shall include requirements such as the approved vegetative cover, silvicultural treatments, weed, insect, and pest control necessary for the establishment and maintenance of vegetative cover and any other information required by the Secretary;

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in the CRP contract, except where, in addition, a cost-share payment for maintenance is specifically authorized in which case the term shall also include a maintenance cost-share payment;

CRP contract means the program contract including the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participants. Such contract shall set forth the terms and conditions for participation in the CRP pursuant to this part;

Erosion index means the factor used to determine the erodibility of a soil by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil;

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, except that croplines will be considered to separate fields only in cases where the predominantly eligible cropland and farming practices divide the land into manageable units and it is likely, as determined by CCC, that such cropline is not subject to change during the duration of the contract;

Field windbreak, shelterbelt, and living snowfence mean a vegetative barriers with a linear configuration composed of trees or shrubs which are designated as such practices in the conservation plan and which are planted for the purpose of reducing wind erosion;

Filterstrip means a strip or area of vegetation around a body of water that is 1 to 1.5 chain lengths (66 to 99 feet) in width that will remove sediment, organic matter, and other pollutants from runoff and waste water;

Highly erodible land means land which is classified by SCS as:

(1) Being predominantly Land Capability Classes II, III, IV, and V with:

(i) An average annual erosion rate of at least 2T or;

(ii) A serious gully erosion problem as determined by the Deputy Administrator; or

(2) Being predominantly Land Capability Classes VI, VII, or VIII; or

(3) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(4) Having:

(A) An erodibility index equal to or greater than 8 for either wind or water erosion, and

(B) An erosion rate greater than T;

Local ASCS office means the county office of the Agricultural Stabilization and Conservation Service serving the county or combination of counties in the area in which the landowner's farm or ranch is located;

Manageable unit means a part of a field that could be farmed in a normal manner as a self-contained unit;

Participant means an owner or operator or tenant who has entered into a contract;

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees;

Practice means a conservation or water quality measure agreed to in the conservation plan to accomplish the desired program objectives.

Predominantly highly erodible field means:

(1) Except as provided in paragraph (2) of this definition, a field in which at least 66⅔ percent of the land in such field is highly erodible;

(2) A field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

Soil Loss Tolerance (T) means the maximum average annual soil loss specified as a tolerance level for a soil in the Soil Conservation Service (SCS) field office technical guide;

Techical assistance means the assistance provided in connection with the ECARP to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices;

Useful life easement means a property interest acquired by CCC pursuant to this part in connection with a CRP contract which requires the maintenance of a practice for the useful life of such practice which period shall be determined by the Deputy Administrator and shall be determined by the Deputy Administrator and shall include practices such as: living snow fences, windbreaks, shelterbelts, permanent wildlife habitat, wildlife corridors and filterstrips devoted to trees and shrubs that through their existence provide environmental benefit. All such easements as may be required shall be in favor of the United States or CCC. The granting of an easement shall be considered to meet the obligation of the contract only if the easement is superior to the rights of all other persons.

Water cover means flooding of land by water in order to develop or restore shallow water areas for wildlife enhancement;

Wellhead means the actual location of a well, as determined by CCC, for water being drawn from the ground.

§ 1410.4 Maximum county acreage.

The maximum acreage which may be placed in the ECARP may not exceed 25 percent of the total cropland in the county unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Performance based upon advice or action of the Department.

The provisions of part 790 of this chapter, as amended, relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.6 Access to land under contract.

Any representative of the Department, or designee thereof, shall have the right of access to: (a) Land which is the subject of an application for a program under this part, (b) or land which is under contract or otherwise subject to this part and shall have the right to examine records, with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the ECARP.

§ 1410.7 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall insure that producers who would have shared in the risk of producing crops on land subject to such contract or agreement receive treatment deemed to be equitable in accordance with part 1413.150 of this chapter.

§ 1410.8 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 1410.9 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in a program under this part may obtain a review of any administrative determination rendered under this program in accordance with the administrative appeal regulations at part 780 of this title.

(b) Determinations concerning land classification, erosion rates, or water quality ratings may be reviewed in accordance with procedures established under part 614 of this title.

§ 1410.10 Scheme and device.

(a) If it is determined by CCC that a participant in a program under this part has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such participant during the applicable period may be withheld or required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land rental payments, and obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will or can obtain a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 1410.11 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the crop year in which the false information or claim was filed. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld.

§ 1410.12 Miscellaneous.

(a) Provisions dealing with controlled substance violations under part 796 of this title are applicable to payments made under this part.

(b) Except as otherwise provided in this part in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(c) Payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made under this part may be withheld to the extent provided for in part 12.

(d) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States as may be permitted by law.

Subpart B—Conservation Reserve Program.

§ 1410.101 General description.

Under the CRP, the Commodity Credit Corporation (CCC) will enter into contracts with eligible producers to convert eligible land to a conserving use for a minimum of ten-years in return for annual rental payments and cost-share assistance.

Except as otherwise provided, a participant may, in addition to any payment under this subpart, receive cost share assistance, rental payments or tax benefits from a State or subdivision of such State in return for enrolling lands in CRP.

§ 1410.102 Eligible persons.

In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner or operator or tenant of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for at least 3 years prior to the close of the applicable signup period and must provide satisfactory evidence that such person will be in control of such cropland for the full term of the CRP contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for at least 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The only ownership change in the three year period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with state law;

(3) As determined by the Deputy Administrator, the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP; or

(4) If a tenant, the tenant is a participant with an eligible owner or operator.

§ 1410.103 Eligible land.

(a) Except as otherwise provided in this section, in order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to an agricultural commodity in 2 of the 5 crop years, from 1986 through 1990;

(2) Be physically possible to be planted in a normal manner, at the time of enrollment, to an agricultural commodity;

(3) Be a predominantly highly erodible field; and

(4) If in a redefined field, be a manageable unit which meets the minimum acreage requirements, as determined by the Deputy Administrator, for the county. This requirement shall not apply for areas, as specified in the contract, to be used for alley cropping, filterstrips, contour grass strips, sod waterways, field windbreaks, shelterbelts, or living snowfences.

(b) A field or portion of a field determined to be suitable for use as a filter strip may be eligible to be placed in the CRP, even if it does not meet the requirement of paragraph (a)(3) of this section. The participant must agree to grow permanent grass, forbs, shrubs or trees on such field or portion of such field. A field or portion of a field may be considered to be suitable for use as a filter strip only if it—

(1) Otherwise meets the requirements of paragraph (a) of this section;

(2) Is located adjacent to streams having perennial flow, other waterbodies of permanent nature (such as lakes, ponds and sinkholes), or seasonal streams, excluding such areas as gullies or sod waterways;

(3) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbodies; and

(4) Is 1.0 to 1.5 chain lengths (66 to 99 feet) in width. Such width may be exceeded, to the extent necessary to meet SCS Field Office Technical Guide criteria, to accomplish the desired environmental effect.

(c) A field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by SCS, may be eligible to be placed in the CRP, even if the field does not meet the requirement of paragraph (a)(3) of this section.

(1) In order for land to be eligible for enrollment in the CRP under this paragraph, such land must otherwise meet the requirements of paragraph (a) of this section.

(2) Such land must in addition:

(i) Be expected to flood a minimum of once every 10 years; and

(ii) Have evidence of damage as a result of such scour erosion.

(3) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled if:

(i) The size of the field is 9 acres or less; or,

(ii) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(4) If the full field is not eligible for enrollment under this paragraph that portion of the field eligible for enrollment shall be that portion of the cropland between the water body and the inland limit of the scour erosion plus, as determined by the Deputy Administrator, together with additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(5) Cropland approved for enrollment under this paragraph shall be planted to an appropriate tree species approved by SCS, unless tree planting is determined to be inappropriate by SCS, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by SCS and the Deputy Administrator.

(d) Notwithstanding paragraph (a)(3) of this section, the following land may also, as determined by the Deputy Administrator, be considered eligible for the CRP under the provisions of this subpart. All other provisions of paragraph (a) of this section must be met.

(1) Land contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under the Agricultural Water Quality Incentives Program (AWQIP).

(2) Land subject to a useful life easement which is devoted to living snowfences, windbreaks, wildlife corridors, shelterbelts or filterstrips with trees or shrubs.

(3) Land that is newly-created permanent grass waterways, or contour grass sod strips created after November 28, 1990, which are established and maintained according to an approved conservation plan;

(4) Non-irrigated or irrigated cropland which produce, as determined by the Deputy Administrator, saline seeps, or which are functionally-related to such saline seeps. Any land which qualifies for the CRP under this subparagraph must be at a location where a rising water table contributes to increased levels of salinity at or near the ground surface.

(e) Federal lands, lands acquired by an agency of the Federal government, or by a quasi federal entity are ineligible for the CRP.

(f) Land otherwise eligible for the CRP shall not be eligible if the land is subject to a deed restriction prohibiting the production of agricultural commodities.

§ 1410.104 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this subpart shall be 10 years in duration.

(b) In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under the original terms of a contract subject to this subpart or for land devoted to such use under a contract modified under § 1410.107, the participant may specify the duration of the contract. Such contracts must be at least 10 years and no more than a total of 15 years in length.

§ 1410.105 Conservation priority areas.

(a) The watershed areas of the Chesapeake Bay region, Great Lakes region, and Long Island Sound Region shall be considered as conservation priority areas for CRP purposes. The Deputy Administrator may designate other areas as conservation priority areas.

(b) State water quality agencies may submit an application for designation of other areas to the Deputy Administrator through the State ASC Committee.

(c) Watersheds shall be eligible for designation as a priority area only if the watershed has actual significant adverse water quality or habitat impacts related to activities of agricultural production.

(d) Conservation priority area designations expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Secretary, if such areas no longer contain actual and significant adverse water quality or habitat impacts in association with agricultural production activities.

(e) In those areas designated as priority areas, under this section, special emphasis will be placed to maximize water quality and habitat benefits of the implementation of the CRP by promoting a significant level of enrollment of lands within such designated watersheds in the program as determined, by the Deputy Administrator, to be appropriate and consistent with the purposes of the program.

§ 1410.106 Alley-cropping.

(a) Alley-cropping on CRP land may be authorized if:

(1) The land is planted to hardwood trees;

(2) Agricultural commodities are planted in accordance with an approved conservation plan in close proximity to such hardwood trees;

(3) The owner and operator of such land, agrees to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Total annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to established technical guidelines and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.107 Conversion to trees.

An owner or operator who has entered into a contract under part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which are devoted to vegetative cover, from such cover to hardwood trees, windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract to a term not to exceed 15 years.

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must provide a conservation easement on such land to CCC for the useful life of such plantings.

(c) CCC shall pay 50 percent of the eligible cost of establishing new conservation measures authorized under this section except that the total cost share paid with respect to such contract, including a cost share paid when the original cover was established, may not exceed the amount which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program.

§ 1410.108 Conversion to wetlands.

An owner or operator who has entered into a contract under Part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland subject to such contract, which are devoted to vegetative cover, from such cover to wetlands, if:

(a) Such areas are prior converted wetlands, as determined in accordance with standards in part 12 of this title;

(b) Such owner or operator provides a permanent easement under subpart C of this part covering such areas;

(c) There is a high probability, as determined by CCC, of successful restoration of such prior converted wetland; and

(d) The restoration of such area otherwise meets the requirements of subpart C of this part.

§ 1410.109 Obligations of participant.

(a) All parties subject to a CRP contract must agree to:

(1) Carry out the terms and conditions of such CRP contract;

(2) Implement the conservation plan which is part of such contract;

(i) The participant shall implement the conservation plan in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control; and

(ii) The participant shall establish temporary vegetative cover when required by the conservation plan or if, as determined by CCC, the permanent vegetative cover cannot be timely established;

(3) Reduce the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Crop acreage bases reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, pursuant to § 1410.117, an extension of such protection;

(4) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after

November 28, 1990 unless such land had a history in the most recent five year period of producing an agricultural commodity other than forage crops;

(5) Comply with all requirements of part 12 of this title;

(6) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time in accordance with instructions issued by CCC in response to drought or other similar emergency;

(7) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(8) Comply with noxious weed laws of the applicable State on such land;

(9) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary to be a good steward of the land for the local area as determined by CCC; and

(10) Be jointly and severally responsible for compliance with such contract and the provisions of this subpart and for any refunds or payment adjustments which may be required for violation of any of the terms and conditions of the CRP contract and provisions of this subpart.

§ 1410.110 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this subpart;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit limited fall and winter grazing on CRP land where the grazing is incidental to the gleaning of crop residues on fields where contracted land is located, but only with prior approval of CCC and in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

§ 1410.111 Conservation plan.

(a) The applicant, in consultation with the SCS, shall develop the conservation plan for the land to be entered in CRP.

(b) The practices included in the conservation plan and agreed to by the participant must achieve the reduction in erosion necessary to maintain the productive capability of the soil, improvement in water quality, protection of a public well head or other environmental benefit as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan.

(d) All conservation plans shall be subject to the approval of CCC.

§ 1410.112 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to:

(1) Establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife,

(2) Meet other environmental benefits, as applicable, for the contract period, and

(3) Accomplish other purposes of the program.

(b) Water cover is an eligible practice if approved by CCC for the enhancement of wildlife, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes.

§ 1410.113 Signup.

Offers for contracts shall be submitted only during public signup periods as announced periodically by CCC, except that CCC may hold a continuous signup.

§ 1410.114 Acceptability of offers.

(a) Producers will submit bids for the amounts they are willing to accept to retire their acreage. The bids will be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits are generated for society per Federal dollar expended.

(b) In evaluating contract offers, different priorities for selection may be established from time to time, in order to accomplish the goals of the CRP, and shall be determined by CCC.

§ 1410.115 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP,

(2) The conservation plan, and

(3) Any other materials determined necessary by CCC.

(c) In order to enter into a CRP contract, the applicant must submit an offer to participate at the local ASCS office during the applicable signup period.

(1) An offer to enroll land in the CRP shall be irrevocable for a period of 30 days subsequent to the close of the applicable signup period of 30 days from such other date as specified by the Deputy Administrator.

(2) The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable, except that such irrevocable period shall not be applicable for the first signup period under this subpart.

(3) CCC may waive payment of liquidated damages as may be provided for in the contract if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant, and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator or designee is authorized to approve CRP contracts on behalf of CCC.

§ 1410.116 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately control erosion through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of erosion control.

§ 1410.117 Extended base protection.

(a) Participants may, subject to approval by CCC, request to extend the preservation of cropland base and

allotment history during the final year of the contract for 5 years. Such approval may be given by CCC only if participants agree to continue for that period to abide by the terms and conditions of the contract relating to the conservation of the property:

(b) Where such an extension is approved, no additional cost share, annual rental or bonus payment shall be made that would not have been made under the original contract for its original term.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5 month period beginning on a date in the period April 1 through October 31 of any year as shall be established by the State committee. In the event of a natural disaster, however, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract, CCC may reduce or terminate the amount of cropland base and allotment history otherwise preserved under the contract or under an extension of the contract.

§ 1410.118 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this subpart, cost-share payments may be made under the CRP only for the establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department or other Federal agency.

(d) Cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) In the case of land devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract subject to this subpart or in the case of land converted to such use under § 1410.107, CCC shall pay 50 percent of appropriate costs, as determined by CCC, to the participant for maintaining such plantings, including the cost of replanting if such plantings are lost for reasons beyond the control of the participant, during not less than the 2-year nor more than the 4-year period commencing on the date of such plantings.

(g) CCC shall not make cost share payments with respect to a CRP contract under this section if any other Federal cost share assistance has been made with respect to land subject to such contract.

§ 1410.119 Levels and rates for cost-share payments.

(a) CCC will pay not more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan except that CCC shall allow cost-shares for maintenance costs to the extent required by § 1410.118(f) and CCC shall determine the period and amount of such cost-shares.

(b) The average cost of performing a practice shall be determined by CCC. Recommendations of the State and county Conservation Review Groups as provided for under parts 701.2 (a) and (f) of this title shall be considered in determining such cost. Such cost may be the average cost in a State, or a part of a county or counties.

§ 1410.120 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRF for any fiscal year shall not exceed $50,000. The regulations set forth in parts 1497 and 1498 of this chapter shall be applicable in making certain eligibility and person determinations as they apply to this part.

(d) In the case of a contract succession, annual rental payments shall be prorated between the predecessor and the successor participants based on the actual days of ownership of the property as reflected in applicable appropriately filed land records.

§ 1410.121 Method of payment.

Except as provided in § 1410.22, payments made by CCC under this part may be made in cash, in kind, in commodity certificates or in any combination of such methods of payment in accordance with part 1470 of this chapter unless otherwise specified by CCC.

§ 1410.122 State enhancement program payments.

For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payment per year a person may receive under this subpart shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such program carried out by such State, political subdivision, or agency thereof which has been approved by the Secretary.

§ 1410.123 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter, except that assignments may also be made to secure or pay pre-existing indebtedness.

§ 1410.124 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC covering such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under such contract of the previous participant;

(3) The following provisions shall be applicable if the new owner or operator becomes a successor to a CRP contract with CCC:

(i) Cost-share payments shall be made to the participant who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.120;

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage; and

(2) Must refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair program operations and is deemed to be in the public interest.

(c) Federal agencies in acquiring property, by foreclosure or otherwise, that contains CRP contract acreage, cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.125 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this subsection:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If CCC determines such failure does not warrant termination of such contract, CCC may grant relief as CCC deems appropriate.

(c) CCC may also terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(d) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.126 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, a modification of such contract may be made by mutual agreement. If the parties to such contract cannot reach agreement with respect to such modification, the CRP contract shall be terminated and all payments paid or payable under such contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC.

Signed this 28th day of February, 1991 in Washington, DC.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-5196 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO-89-A1; FV-90-100]

Kiwifruit Grown in California; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order which cover kiwifruit grown in California and provides California kiwifruit producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the marketing order program. The proposed changes would reduce the terms of office from 2 years to 1 year for certain committee members, clarify the way in which grower membership is allocated, revise committee tenure requirements, authorize committee nominations to be conducted by mail, authorize a change in the terms of office which now begin August 1, and authorize a late payment charge on delinquent handler assessments. These changes are being proposed to improve the administration, operation and functioning of the marketing order program.

DATES: The referendum shall be conducted from March 15 through April 5, 1991. The representative period for the purpose of the referendum herein ordered is August 1, 1989, to July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020; or Gary D. Olson, California Marketing Field Office, USDA, AMS, 2202 Monterey Street, suite 102-B, Fresno, California 93721, telephone (209) 487-5901.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued December 6, 1989, and published in the **Federal Register** on December 11, 1989 [54 FR 50765]. Recommended Decision and Opportunity to File Written Exceptions—Issued November 23, 1990, and published in the **Federal Register** on November 29, 1990 (55 FR 49532).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

These proposed amendments were formulated on the record of a public hearing held at Fresno, California, on January 19, 1990, to consider the proposed amendment of the Marketing Agreement and Order No. 920, hereinafter referred to collectively as the "order," regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred as to the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Kiwifruit Administrative Committee (committee) established under the order to assist in local administration of the program.

The proposals would reduce the terms of office from 2 years to 1 year for certain committee members, clarify the way in which grower membership is allocated, revise committee tenure requirements, authorize committee nominations to be conducted by mail, authorize a change in the terms of office which now begin August 1, and authorize a late payment charge on delinquent handler assessments. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on November 23, 1990, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 31, 1990. No exceptions were received.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

The record indicates that there are approximately 100 handlers and 1,200 growers of California kiwifruit. While there is a variance in the size of individual growing and handling operations, the record indicates that the majority of the kiwifruit growers and 30 to 40 percent of the handlers would be classified as small businesses under the SBA's definitions.

This decision proposes amendments to the order pertaining to committee member appointments and nominations. Also proposed is adding authority to establish late payment charges on delinquent handler assessments. The record indicates that these changes would improve the administration and operation of the program to the benefit of all kiwifruit growers and handlers.

One proposal is to change the terms of office of three grower members of the committee from 2 years to 1 year. The order currently provides that the committee consist of 11 growers and 1 public member, each with an alternate. One grower is selected to represent each of the eight established geographic districts, and the three districts with the highest levels of production are each entitled to a second grower member position. All members now serve 2-year terms of office. However, a determination is made each year as to which three districts are entitled to a second grower member position, and the three additional grower member seats are allocated annually. The record supports continuing the annual allocation of grower membership so that the frequent shifts in kiwifruit volumes are promptly reflected in committee representation. Although this change could result in more frequent nominations, the costs to the committee and to the growers who participate in the nomination process would be minimal. This change would facilitate equitable allocation of committee membership. Accordingly, it would benefit all kiwifruit growers and handlers. This benefit should outweigh any additional costs relating to additional nominations.

This decision also proposes clarifying the way in which grower membership is allocated among the districts. The record indicates that the districts with the highest levels of shipments in the previous fiscal year should be allocated a second grower member position to reflect current procedures, rather than those with the greatest production during that year. The record indicates that the committee currently collects and compiles shipment data by district, which accurately reflect the relative volumes of kiwifruit grown in the various districts. This change would impose no additional costs on growers or handlers, but would merely clarify the way in which the committee currently determines grower member allocation among the districts.

This decision also proposes revising tenure requirements so that a committee member who has served for six consecutive years on the committee could then serve as an alternate member. The record indicates that this amendment would enable growers who have become knowledgeable of the marketing order and committee operations to continue participating in committee deliberations. Tenure requirements would still apply to voting member positions to promote participation by a larger number of California kiwifruit growers in administering the order. No additional costs would be imposed as a result of this change.

Currently, the order provides that nominations for grower members be conducted at grower meetings held in each of the order's eight geographic districts. The record indicates that adding authority to conduct nominations by mail would increase grower participation in the nomination process. This proposed change would also reduce the administrative costs associated with conducting nomination meetings, as well as the costs incurred by individual growers in travelling to and attending the meetings. This change should therefore have a positive impact on both large and small kiwifruit growers and handlers.

Currently, committee members serve terms of office which begin August 1. The record indicates that since complete shipment data may not be available until July or August in some years, the mail nomination process may not be completed prior to August 1. Therefore, the record supports adding authority to change the terms of office. To the extent that this change would facilitate the nomination process, it would have a positive impact on growers and handlers. No additional costs would be imposed as a result of this change.

Finally, it is being proposed that authority be added to the order to provide for the establishment of a late charge on delinquent handler assessments. This would provide handlers with an incentive to make assessment payments in a timely manner. This change would not impose additional costs on those handlers who remit their assessments on time.

Each of the proposed changes set forth in this document is designed to enhance the administration, operation and functioning of the order, and would not have a significant economic impact on the affected small entities. Further, the proposed amendments would have no significant impact on the reporting and recordkeeping requirements imposed on small businesses. Of the proposed amendments, that pertaining to mail nominations could result in additional reporting by growers. However, participation would be voluntary, and the record indicates that the cost of completing a ballot would be

substantially less than that to attend a nomination meeting. In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), any reporting and recordkeeping provisions that may result from this action would be submitted to OMB for approval. The proposed amendments include authority for mail nominations. There are approximately 1,200 growers who would be affected by mail nominations, if implemented. Regulations would be promulgated to implement this provision. Accordingly, any information collection or recordkeeping requirements that may result from these amendments would be submitted to the OMB for approval and would not become effective prior to OMB approval.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the November 29, 1990, issue of the **Federal Register** [55 FR 49532] are hereby reaffirmed and adopted in this Decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order Regulating the Handling of Kiwifruit Grown in California" and "Marketing Agreement as Amended, Regulating the Handling of Kiwifruit Grown in California." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical to those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of kiwifruit grown in California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit grown in California.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1989, to July 31, 1990.

The agents of the Secretary to conduct such referendum are hereby designated to be Gary D. Olson and Robert J. Curry, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721, telephone (209) 487–5901.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

Signed at Washington, DC, on February 28, 1991.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Kiwifruit Grown in California [1]

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as hereby amended, regulates the handling of kiwifruit grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of kiwifruit grown in the production area; and

(5) All handling of kiwifruit grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of kiwifruit grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1990, and published in the **Federal Register** on November 29, 1990, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 920.21 is revised to read as follows:

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be for two years from the date of their selection and until their successors are selected; except that the term of office of the three additional grower members and their alternates selected from the three districts shipping the greatest volumes of kiwifruit in the prior fiscal period shall be for one year. The terms of office shall begin on August 1 and end on the last day of July, or such

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

other dates as the committee may recommend and the Secretary approve. Members may serve up to three consecutive 2-year terms or six consecutive 1-year terms on the committee or a combination thereof not to exceed 6 consecutive years as members. Alternate members may serve up to three consecutive 2-year terms or six consecutive 1-year terms or a combination thereof not to exceed 6 consecutive years as alternate members.

3. Section 920.22 is revised to read as follows:

§ 920.22 Nomination.

(a) Except as provided in paragraph (b) of this section, the committee shall hold, or cause to be held, not later than July 15 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of growers in each district for the purpose of designating nominees to serve as grower members and alternates on the committee. Any such meetings shall be supervised by the committee, which shall prescribe such procedures as shall be reasonable and fair to all persons concerned.

(b) Nominations in any or all districts may be conducted by mail in a manner recommended by the committee and approved by the Secretary.

(c) Only growers may participate in the nomination of grower members and their alternates. Each grower shall be entitled to cast only one vote for each position to be filled in the district in which such grower produces kiwifruit. No grower shall participate in the election of nominees in more than one district in any one fiscal year.

(d) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(e) The public member and alternate shall be nominated by the grower members of the committee.

4. Section 920.41 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 920.41 Assessments.

(a) * * * If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both, as may be established by the Secretary upon recommendation of the committee.

* * * * *

Marketing Agreement, as Amended, Regulating the Handling of Kiwifruit Grown in California

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure effective thereunder (7 CFR part 900) desire to enter into this agreement amending the marketing agreement regulating the handling of kiwifruit grown in California; and each party hereto agrees that such handling shall, from the effective date of this marketing agreement, be in conformity to, and in compliance with, the provisions of said marketing agreement as hereby amended.

The provisions of §§ 920.1–920.70, inclusive, of the order as amended annexed to and made a part of the decision of the Secretary of Agriculture with respect to a proposed marketing agreement and order regulating the handling of kiwifruit grown in California, plus the following additional provisions shall be, and the same hereby are, the terms and conditions hereof; and the specified provisions of said annexed order are hereby incorporated into this marketing agreement as if set forth in full herein:

§ 920.71 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 920.72 Additional parties.

After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 920.73 Order with marketing agreement.

Each signatory handler requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of kiwifruit in the same manner as is provided for in this agreement.

The undersigned hereby authorizes the Director, or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have been made in this marketing agreement.

In witness whereof, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm Name)

By: [1] _____

(Signature)

(Mailing Address)

[1] If one of the contracting parties to this agreement is a corporation, my signature constitutes certification that I have the power granted to me by the Board of Directors to bind this corporation to the marketing agreement.

(Title)

(Date of Execution)

(Corporate Seal; if none, so state)

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This information is required to determine voter eligibility and vote of kiwifruit handlers. Falsification of information on this government document may result in a fine of not more than $10,000 or imprisonment for not more than five years or both (18 U.S.C. 1001).

(For use by incorporated handlers)

Certificate of Resolution (Corporation only)

At a duly convened meeting of the Board of Directors of _____ held at _____ on the _____ day of _____ 1991, Resolved, That _____ shall become a party to the marketing agreement regulating the handling of kiwifruit grown in California, which was annexed to and made part of the decision of the Secretary of Agriculture, and it is further, Resolved, That

(Name)

(Title)

and

(Name)

(Title)

be, and the same hereby are, authorized and directed severally or jointly to sign, execute, and deliver counterparts of the said agreement to the Secretary of Agriculture.

I, _____, Secretary of _____ do hereby certify this is a true and correct copy of a resolution adopted at the above named meeting as said resolution appears in the minutes thereof.

(Signature)

(Address of Firm)

(Corporate Seal; if none, so state)

[FR Doc. 91–5280 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1005

[Docket No. AO-388-A4; DA-90-032]

Milk in the Carolina Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments To Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes to the Carolina order that would allow a handler operating more than one distributing plant to combine the receipts and dispositions of such plants for the purpose of qualifying them as pool plants. The decision is based on the record of a public hearing held November 8, 1990, at Charlotte, North Carolina. The proposed changes were submitted by a cooperative association and a dairy processor. The changes were supported by another cooperative association that also supplies the dairy processor. The changes are necessary to provide more efficient procedures for handling milk, to reflect current marketing conditions and to assure orderly marketing in the Carolina area.

DATES: Comments are due on or before March 20, 1991.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility A (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Only one multi-plant handler operation is expected to elect unit pooling to effect more efficient processing of certain milk products. The amendment would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued October 24, 1990; published October 30, 1990 (55 FR 45612).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Carolina marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 14th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendment set forth below is based on the record of a public hearing held at Charlotte, North Carolina, on November 8, 1990, pursuant to a notice of hearing issued October 24, 1990 (55 FR 45612).

The material issue on the record of hearing relates to pool plant qualification standards for distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The provisions affecting the pool qualification of distributing plants under the Carolina Federal milk order should be amended to allow a handler who operates two or more distributing plants to consider them as a unit for the purpose of meeting the order's total Class I disposition requirement. Each plant should continue to be required to distribute at least 15 percent of the total amount of milk received at or diverted from the plant as route disposition in the marketing area.

Currently, 60 percent of the amount of milk received at or diverted from each distributing plant during the months of August through November, January and February must be disposed of as Class I milk in order for the plant to be qualified as a pool plant. The applicable percentage requirement for the months of March through July and December is 40 percent.

Southern Milk Sales, Inc. (SMS), a cooperative association, and Hunter Jersey Farms, Inc. (Hunter), a proprietary handler, proposed that the order provide for unit pooling of distributing plants. Under their proposal, the receipts and disposition of the distributing plants requested by a multi-plant handler to be considered as a unit would be combined, and the plants would be treated as a single plant for the purpose of determining whether the unit meets the total route disposition requirement for a pool distributing plant.

Several witnesses for the proponents testified in support of the proposal and a witness for Piedmont Milk Sales (Piedmont) supported the proposal. There was no testimony at the hearing or statements in briefs in opposition to the proposal.

The first witness for SMS said that SMS and Hunter, prior to September 1, 1990 (effective date for the Carolina order) estimated the Hunter plant's Class I utilization at High Point, North Carolina, for the months of September through November 1990 to be about 50 percent. The witness said that the failure to meet the 60 percent requirement would result in the plant at High Point not being a pool plant. Nonpool status, she said, would cost the SMS producers about 90 cents per hundredweight. She said that the estimated 90 cents was based on a comparison of the Class I utilization at the High Point plant of 50 percent and the marketwide Class I utilization of 82 to 85 percent. SMS, she said, with a 90-cent reduction in pay prices would not be competitive with other producers in the market.

The spokeswoman for SMS said that Hunter was able to meet the 60 percent standard for September 1990 by shifting operations between the Hunter plant at High Point and the Hunter plant at Charlotte. SMS, she said, delivered less milk to the High Point plant and more milk to the Charlotte plant and at the same time more fluid milk was processed and packaged at the High Point plant and less was processed and packaged at the Charlotte plant. The witness said that SMS incurred an additional cost of about 15 cents per hundredweight on about 500,000 pounds of milk that was delivered to the Charlotte plant rather than the High Point plant.

A witness for Hunter testified that Hunter had to incur additional transportation costs in moving some packaged fluid milk sales accounts normally associated with the Charlotte

plant to the selling points associated with the High Point plant. On a combined accounting basis, he said, the Class I utilization of the two plants would be between 65 and 70 percent. He said that Hunter, because of the location of its customers, could not concentrate all of its fluid milk processing at the Charlotte plant and all of its manufacturing at the High Point plant.

The Hunter witness said that Hunter acquired the High Point plant from Borden in April 1990 and that Borden had decreased its fluid milk processing at the High Point plant because of its decision to transfer some of that volume to one of its other plants. He said that in order to keep the High Point plant operating, Hunter decreased its processing of fluid milk products (about 75,000 gallons of milk per week) at its Charlotte plant and increased its fluid milk processing at the High Point plant. He said that even with these uneconomic changes in their operations, he did not think that the High Point plant could achieve a 60 percent or better Class I utilization in the future.

The third witness testifying on behalf of SMS and Hunter said that the "unit pooling" proposal would not change any of the other pooling requirements such as the "in area" route disposition requirement. He said that the record shows that in recent months the Class I utilization at the High Point plant has dropped considerally. At the time the hearing was held to consider promulgation of the Carolina order (April 1989) these developments were not foreseen; otherwise, "unit pooling" would have been proposed.

The spokesman for the proponents stated that at the proponents' request, the Department issued a temporary revision that reduced the 60 percent distribution requirement to 50 percent for the months of October and November 1990 and January and February 1991. He said that the 60 percent requirement would again be effective for the month of August 1991.

The witness for SMS and Hunter said that the steps taken by Hunter to pool the two plants lessen the ability of Hunter to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another plant. He said that the steps taken by Hunter can also result in the disruption of the normal farm-to-market movement of milk by requiring a portion of the supply to be delivered to an alternative plant at a greater distance.

The spokesman for SMS and Hunter said that regulatory provisions should encourage orderly and efficient handling, processing and distribution of milk and milk products and that "unit pooling" is contained in other Federal orders such as the Tennessee Valley order. He said that the proposal will not adversely affect any other proprietary handler or cooperative association associated with the Carolina marketing area.

The proposed "unit pooling" proposal should be adopted. The record evidence demonstrates that inefficient steps were taken by the proponents to pool the High Point plant. The temporary revision issued by the Department for the months of October and November 1990 and January and February 1991 (60 percent to 50 percent) should enable the High Point plant to be pooled without the proponents having to resort to the inefficient steps that were taken in September. The High Point plant would only have to meet a 40 percent fluid milk dispostion requirement for the month of December and the months of March 1991 through July 1991. However, the record indicates that the problem encountered by the High Point plant is not temporary and that amendatory action is needed.

The "unit pooling" proposal will remove the need for SMS and Hunter to incur additional transportation costs with respect to the shifting of bulk milk between the two plants and also the additional transportation in moving packaged milk from the High Point plant greater distances to the sales outlets associated with the Charlotte plant.

Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of some fluid milk products in one plant and other products in another plant. With unit pooling, as herein adopted, it will be possible for a multi-plant handler to confine certain specialized operations to one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining its total operation in one plant.

Adoption of the proposed amendment will not allow the pooling of any plant that does not distribute a significant amount of fluid milk, or any distributing plant that is not primarily associated with the Carolina marketing area. To qualify for pooling as a unit, each distributing plant in the unit would still have to dispose of at least 15 percent of its receipts as route disposition in the marketing area. This requirement will ensure that each plant pooled in the unit has a significant commitment to supplying fluid milk products to the marketing area.

The witnesses' concern about the reduction in pay prices of about 90 cents to SMS producers delivering milk to the High Point plant should the plant fail to qualify for pooling is valid. A reduction in pay prices of this amount at this location could result in disruptive marketing conditions.

In order to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Carolina order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be

applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Carolina marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

PART 1005—[AMENDED]

1. The authority citation for 7 CFR Part 1005 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In 1005.7, paragraph (a)(2) is revised to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Signed at Washington, DC, on: March 1, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–5281 Filed 3–5–91; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AA96

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") is proposing to amend part 327 of its regulations ("Assessments"), 12 CFR part 327, to increase the assessment to be paid by Bank Insurance Fund ("BIF") members during the second half of calendar year 1991 and thereafter.

DATES: Written comments must be received by the FDIC not later than April 5, 1991.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Alvin E. Kitchen, Associate Director, Division of Accounting and Corporate Services, Federal Deposit Insurance Corporation, 550 Seventeenth St., NW., Washington, DC, 20429, (202) 625–8344.

SUPPLEMENTARY INFORMATION: .

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply to the publication of "a rule of particular applicability relating to rates." *Id.* 601(2). Accordingly, the Act's requirements relating to an initial and final regulatory flexibility analysis (*id.* 603 & 604) are not applicable.

In any case, the primary purpose of the Regulatory Flexibility Act is fulfilled as a matter of course. The Act's purpose is to make sure that agencies' rules do not impose disproportionate burdens on small businesses. The Act is "designed to encourage agencies to tailor their rules to the size and nature of those to be regulated whenever this is consistent with the underlying statute authorizing the rule." See 126 Cong. Rec. 21453 (1980) ("Description of Major Issues and Section-by-Section Analysis of Substitute for S. 299"). The Federal Deposit Insurance Act specifies how assessments are computed, and generally gears each institution's assessment to the institution's size (as measured by domestic deposits). See 12 U.S.C. 1813 & 1817. The FDIC has no authority to "tailor [assessments] to the size and nature of [banks]" in any manner other than that set forth in the Act.[1]

Accordingly, the Board hereby certifies that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

The Proposed Rule

The FDIC must assess all insured depository institutions. *Id.* 1817. The FDIC's assessment rules are set forth in part 327 of Title 12 of the Code of Federal Regulations ("Assessments").

I. Increase in the BIF Assessment Rate

The BIF assessment rate is the greater of .15 percent or such rate as the Board determines to be "appropriate * * * to increase the reserve ratio to the designated reserve ratio within a reasonable period of time." See id. 1817(b)(1)(C). When determining an appropriate rate, the Board must consider the BIF's financial condition—its expected operating expenses, case resolution expenditures, and income—and the effect of the assessment rate on the earnings and capital of BIF members. The Board may consider other appropriate factors as well.

[1] The Board believes that the adverse effects of the higher assessment rate do not fall disproportionately on smaller banks. See table 2.

The BIF assessment rate currently stands at .195 percent per annum. The Board is proposing to increase it to .23 percent per annum, effective for the second semiannual period of 1991 and thereafter.

A. Need for the Increase.

The BIF's designated reserve ratio is currently set by statute at 1.25%. *Id.* 1817(b)(1)(B). The BIF's actual reserve ratio is below that level. The ratio and the BIF's balance have both declined significantly. The ratio has fallen from 1.10 percent at year-end 1987 (when the BIF's balance stood at $18.3 billion) to .80 percent at year-end 1988 (BIF balance $4.1 billion), and then to .70 percent at year-end 1989 (BIF balance $13.2 billion). Preliminary figures indicate that the ratio was .43 percent at the end of 1990 (BIF balance $8.5 billion).[2]

Current data suggest that the BIF reserve ratio will continue to decline through the end of 1992 if the current assessment rate remains in effect throughout that period. Under the FDIC's baseline assumptions,[3] the ratio is expected to decline to .19 percent (BIF balance $3.9 billion) by the end of 1991 and to .11 percent at the end of 1992 (BIF balance $2.4 billion).[4] Under pessimistic assumptions,[5] the BIF ratio is expected to be zero at the end of 1991 and to be negative (-.27 percent; BIF balance -$5.8 billion) at the end of 1992:[6]

TABLE 1.—BANK INSURANCE FUND TRENDS AND PROJECTIONS, 1984–1992

[Dollars in Billions]

Year	No. failed banks	Failed banks assets [1]	Failed banks assets (adjust)	Baseline Estimate				Pessimistic Estimate			
				Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)	Total income [2]	Total expense	Fund balance	BIF reserve ratio (percent)
1984	80	$38.9	$38.9	$3.1	$2.0	$16.5	1.19	$3.1	$2.0	$16.5	1.19
1985	120	8.8	8.8	3.4	2.0	18.0	1.19	3.4	2.0	18.0	1.19
1986	145	7.7	8.9	3.3	3.0	18.3	1.12	3.3	3.0	18.3	1.12
1987	203	9.5	20.8	3.3	3.3	18.3	1.10	3.3	3.3	18.3	1.10
1988	221	53.9	61.6	3.4	7.6	14.1	0.80	3.4	7.6	14.1	0.80
1989	207	29.2	15.5	3.5	4.3	13.2	0.70	3.5	4.3	13.2	0.70
1990 [3]	169	16.3	39.8	3.9	8.6	8.5	0.43	3.9	8.6	8.5	0.43
Estimates for 1991 and 1992											
1991	180–230	$65–90B		$5.4	$10.0	$3.9	0.19	$5.4	$13.9	$0.0	N/A
1992	160–210	30–70B		5.0	6.5	2.4	0.11	5.0	10.8	−5.8	−0.27

[1] Reserves are established for open banks when their failure appears likely. The adjusted figures on failed bank assets reflect either the year reserves were established or the year the bank was actually closed, whichever was earlier.
[2] Assumes that the current assessment rate (19.5 per $100 of domestic deposits) remains in effect through year-end 1992.
[3] 1990 BIF revenue and expense figures are preliminary.

Accordingly, the Board proposes to raise the BIF assessment rate for the second semiannual period of 1991 and thereafter. The BIF assessment rate is currently fixed at .195 percent. The Board proposes to raise it to .23 percent.

The increase is needed as part of an overall effort to bring the reserve ratio up to 1.25 percent within a reasonable time. The FDIC presently anticipates it will need to borrow working capital of approximately $10 billion. The increased assessment rate proposed here is expected to generate additional revenues of approximately $870 million per year and would provide the funds needed to pay the interest and amortization on that level of borrowing.

The FDIC's anticipated borrowing, and the assessment increase needed to fund it, are only interim measures. They must be seen in the context of longer-term BIF recapitalization efforts currently under development. In this regard, a number of parties have proposed plans for revising the Federal approach to supervising insured depository institutions, specifically including a program of risk-based deposit insurance.

B. Impact on Bank Capital

1. The industry as a whole. The FDIC staff estimates that increasing the assessment rate from .195 percent to .23 percent for the second semiannual period of 1991 would have a minimal impact on industry capital levels. The tangible equity capitalization of BIF members as of September 30, 1990, was approximately $224.3 billion. An assessment rate increase of .035 percentage point, effective with the second-half 1991 semiannual assessment, would raise 1991 industry assessments by an estimated $435 million, or less than .2 percent of third-quarter 1990 industry capital. On an annualized basis, the additional assessments ($870 million) [7] amount to about .39 percent of third-quarter 1990 industry capital.

FDIC staff estimates indicate that year-end 1992 tangible equity capitalization would be just under $251.8 billion if the .195 percent rate remained in place, and would drop by only about $.5 billion—to just over $251.2 billion—if the rate were raised to .23 percent.

Insurance assessments are a tax deductible operating expense for banks.

[2] During the past 4 years, 800 banks with about $140 billion in total assets have been closed or reserved for, costing the BIF $23 billion. The BIF's administrative and operating expenses over that period have exceeded $850 million. As a result, although the BIF has generated about $14 billion in revenue during this time, the BIF has declined from $18.3 billion at year-end 1986 to $8.5 billion as of year-end 1990. About $7.5 billion is comprised of cash or other liquid assets.

[3] The "baseline" forecast assumes a moderate recession of about six months duration. It does not represent a best-case scenario.

[4] Under currently expected conditions, FDIC staff projects that 180 banks will be closed in 1991, with another 160 failures in 1992. FDIC staff estimates that reserves of $10 billion will be set aside to cover total expenses and losses on $65 billion in failed-bank assets in 1991. Another $6.5 billion in reserves will be needed in 1992 to cover expenses and losses on $30 billion in failed-bank assets. If the assessment rate were to remain at .195 percent, the BIF's income would be approximately $5.4 billion in 1991 and $5.0 billion in 1992.

[5] The assumptions are "pessimistic" in that they assume the recession lasts for more than a year. They do not represent a worst-case scenario.

[6] Under these assumptions, FDIC staff projects that 230 banks would fail in 1991 and 210 banks would fail in 1992. Reserves of $13.9 billion would be needed to cover expenses and losses on $90 billion in failed-bank assets in 1991. Reserves of $10.8 billion would be needed to cover expenses and losses on $70 billion in failed-bank assets in 1992.

[7] The FDIC staff has projected the BIF assessment base to increase at an annual rate of 4.5 percent during 1991

Assuming an average tax rate of 34 percent, the after-tax cost of the assessment increase would be $574 million per year. In addition, it is reasonable to expect that some portion of the assessment increase will be passed along to bank customers in the form of higher borrowing rates, increased service fees, and lower deposit rates. However, the FDIC staff has assumed, for the purposes of this analysis, that banks will bear the full after-tax cost of the assessment.

The impact of the indicated assessment increase upon banks' book capital is dependent upon assumptions about dividend policies and new capital issues. If banks maintain dividend levels, despite the increase in operating costs, book capital will decline by the full amount of the after-tax cost of the assessment increase, assuming no new capital issues. That is to say, if dividends are not reduced, then the increased operating costs will be reflected in lower retained earnings.[8]

For the projections presented here, it was assumed that banks' dividend rates remained unchanged from those reported in September 1990. Consequently, the total $870 million in increased after-tax assessment costs projected over the next one-and-a-half years results in a $574 million total decline in capital and a $296 million total reduction in dividends. This represents a reduction in average annual dividends for the industry of approximately $197 million or 1.4 percent of total 1989 industry dividends of $14 billion. It was further assumed that the only source of new book capital considered is additions to retained earnings.

2. Individual banks. At the end of 1989, there were 87 BIF-insured banks (assets: $18.5 billion) reporting negative equity capital. The added expense of a .195 percent assessment rate in 1989 would have exceeded the total equity capital of five more banks (assets: $12.5 billion). For another 48 banks (assets: $11.0 billion), the higher insurance premiums would have represented more than 10 percent of their equity capital.

If the assessment rate in 1989 had been .2125[9] percent, no additional banks would have seen their equity capital eclipsed by the additional insurance fee. Another 10 banks (assets: $12.1 billion) would have had increased premiums equal to more than 10 percent of their equity capital.[10]

During 1992, the assessment increase is projected to raise the number of poorly capitalized banks—those with less than 3 percent tangible capital—by only 6 banks (average assets: under $34 million). The number of banks with between 3 and 6 percent tangible capital is projected to increase by 9 (average assets: under $255 million). In sum, while the assessment increase lowers the book capital of most banks, the overall impact is expected to be negligible.

C. Earnings

1. Impact on the industry. The additional assessment premiums, when measured over a full year, would boost BIF members' noninterest overhead expenses by approximately .73 percent. The additional expense of the 3.5 basis point assessment rate increase, measured on an annualized basis, amounts to 3.2 percent of 1990 pre-tax net operating income and 4.6 percent of net income after taxes and nonrecurring extraordinary gains through the first three quarters. The after-tax impact would be reduced to just above 3 percent of 1990 net income, however, when State and Federal income tax provisions—which amounted to $7.5 billion through the first three quarters of 1990—are considered.[11] For comparison, the increased assessment expense comprises about 5.8 percent of full year 1989 net income, before adjusting for any tax offsets.

2. Individual banks.[12] The assessment rate stood at .083 percent during 1989. That year 1,693 BIF members (assets: $739 billion) reported full-year earnings losses totalling $10.5 billion.

If the 1991 statutory assessment rate (.195 percent) had been in effect, this group of banks would have lost an additional $469 million. Another 184 banks (assets: $94 billion) would have lost $40 million. In addition, 5,172 banks (assets: $974 billion) would have had their earnings reduced by more than 10 percent.

If the assessment rate had included the proposed increase in 1989—*i.e.*, if the assessment rate had been .2125 percent—only 23 more banks (assets: $2 billion) would have seen their net income reduced below zero by the additional insurance assessment:[13]

TABLE 2.—BIF MEMBERS WITH EARNINGS LOSSES UNDER DIFFERENT ASSESSMENT SCENARIOS

[Based on 1989 earnings; amounts in $ millions]

	Actual 1989 rate (0.083%)	Statutory 1991 rate (0.195%)	Proposed 1991 rate (0.2125%)
Number of banks with negative net income	1,693	1,877	1,900
Combined losses	$10,544	$11,053	$11,137
Total assets	$739,332	$832,843	$835,103

The number of banks with earnings reductions of more than 10 percent would increase by 1,645 banks (assets: $390 billion). The average reduction in earnings among this group of banks attributable to the 3.5 basis-point increase in the assessment rate in the second semiannual period (from .195 percent to .23 percent) would have been approximately 4.5 percent.

The 1,693 banks reporting net losses in 1989 included 245 banks (assets: $127 billion) that had equity capital of less than 3 percent of assets at year-end 1989. If the assessment rate had been .195 percent, four additional thinly-capitalized banks would have reported a net loss for the year, and 23 others

[8] A change in the value of a bank's book capital is not the same as a change in the bank's overall market value. Some observers have suggested that, if banks cut dividends in order to maintain internal capital generation rates, the market value of common stock will be reduced, and that banks raising capital through new stock issues will see a reduction in the proceeds from new capital issues. This argument runs counter to standard financial theory. While the market value of bank equity undoubtedly rises and falls with profits, it should be independent of dividend policy. Accordingly, the bank's ability to attract new capital should not be materially affected by assumptions about dividend policy.

[9] This is the average of the current assessment rate (.195 percent) for the first semiannual period, and the proposed assessment rate (.23 percent) for the second semiannual period.

[10] It is assumed that all increased deposit insurance costs are taken directly out of retained earnings; in practice, the impact on equity capital can be minimized by tax effects, cost pass-throughs, and lower dividend payments.

[11] The percentages of pre-tax net operating income and net income would be expected to increase if fourth quarter 1990 loan loss provisions exceed the quarterly amounts for the first nine months of the year.

[12] This analysis of the impact of higher assessment rates on bank earnings makes several simplifying assumptions, which have the effect of overstating the likely consequences of a rate increase. Estimated assessment payments are based on end-of-year total domestic deposits, which enlarges the assessment base; in practice, actual assessments would be somewhat lower than the amounts used here. In addition, the effect of higher insurance premiums represents a "worst-case" scenario, in which no tax effect or cost pass-through is assumed, where all higher payments are carried directly through to lower net income.

[13] The affected banks are not disproportionately small ones. Twenty of them have assets under $100 million (87%); two have assets from $100 million to $1 billion (8.7%); one affected bank has assets between $1 billion and $5 billion (4.4%); and none has assets exceeding $5 billion. By comparison, banks with assets under $100 million comprise 75% of all BIF members; $100 million-to-$1 billion banks comprise 21.5%; $1-to-$5 billion comprise 2.5%; and banks with assets over $5 billion comprise the remaining 1%.

would have had more than 10 percent of their net income absorbed by the additional assessment payments. Lifting the assessment rate a further 3.5 basis points for the second semiannual period would not have resulted in any additional under-capitalized unprofitable banks, nor would it have caused any additional banks to have earnings reduced by more than 10 percent.

II. Comment Period

The FDIC is publishing the proposed rule with a public comment period of thirty days.

List of Subjects in 12 CFR Part 327:

Assessments, Bank deposit insurance, Financing Corporation, Savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 327 of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 327 continues to read as follows:

Authority: 12 USC 1441, 1441b, 1817–19.

2. § 327.13 paragraph (c) is revised to read as follows:

§ 327.13 Payment of assessment.

* * * * *

(C) *Assessment rate.* The annual assessment rate for each BIF member shall be:

(1) For the first semiannual period of calendar year 1991, .195 percent; and

(2) For the second semiannual period of calendar year 1991, and for subsequent semiannual periods, .23 percent.

By order of the Board of Directors.

Dated at Washington, DC, this 28 day of February, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–5276 Filed 3–5–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

Priority Status in Bankruptcy Proceedings

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to provide that to the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs. The assignment of this priority status will minimize the risk incurred by a broker or a surety in assuming liability for duties of the importer and thus encourage early payment of duties to Customs.

DATES: Comments must be received on or before May 6, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Lehman, Office of Chief Counsel (202–566–5476).

SUPPLEMENTARY INFORMATION:

Background

The Bankruptcy Code provides in 11 U.S.C. 507(a)(7) for seventh priority status in a bankruptcy proceeding for allowed unsecured claims of governmental units. Priority status of claims by Customs for duties arising out of the importation of merchandise prior to the filing of bankruptcy are specifically provided for in three instances: (1) Merchandise is entered for consumption within one year before the date of filing the petition; (2) merchandise covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; (3) merchandise entered for consumption within four years before the date of the filing of the petition, but unliquidated on that date where the failure to liquidate was due to a pending investigation or need for information. 11 U.S.C. 507(a)(7)(F). Such claims are given seventh priority along with governmental claims for taxes for income or gross receipts, property tax, withholding tax, employment tax, and excise tax generally assessed one year prior to the filing of the bankruptcy petition.

Presently, brokers or sureties which pay Customs duties on behalf of an importer which files for bankruptcy protection are relegated to the status of unsecured creditor. This proposed rule is in response to instances in which a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, leaving the broker or surety with an unsecured claim. Although the broker or surety has a contractual right for reimbursement, this claim falls well below that of other priority claims, and brokers and sureties have been unable to collect from the estate amounts paid on behalf of the importer.

In an attempt to facilitate the entry process and to encourage early payment of duties, Customs is proposing to amend the regulations. Customs is aware of the vital service provided by brokers and sureties through the prompt payment of Customs duties. In keeping with the goal of Customs to provide efficient processing of entries and collection of duties, Customs is of the opinion that the assignment of priority status will minimize the monetary risk incurred by a broker or surety in assuming liability for duties of an importer.

It is proposed to revise the Customs Regulations to provide that, to the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs. The proposed regulation would allow a broker or surety who pays a claim for duties to hold the priority status conferred by statute on Customs for unsecured claims for duties.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291

Because this document does not result in a "major rule" as defined by Executive Order 12291, the regulatory analysis and review prescribed by the Executive Order is not required.

Regulatory Flexibility Act

This proposed amendment is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection; Imports.

Proposed Amendment

It is proposed to amend part 141, Customs Regulations (19 CFR part 141), as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 is revised in part to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * *

Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;

* * * * *

2. In § 141.1 paragraph (c) is revised to read as follows:

§ 141.1 Liability of importer for duties.

* * * * *

(c) *Claim against estate of importer.* The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7)(F) of the Bankruptcy Code on a *pro rata* basis on the total amount due Customs.

Carol Hallett,

Commissioner of Customs.

Approved: February 28, 1991

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 91-5256 Filed 3-5-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 90N-0200]

RIN 0905-AA06

Warning Statements Required for Over-the-Counter Drugs Containing Water-Soluble Gums as Active Ingredients; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; clarification.

SUMMARY: The Food and Drug Administration (FDA) is issuing a clarification of its notice of proposed rulemaking requiring a warning in the labeling of all over-the-counter (OTC) drug products containing as active ingredients water-soluble gums, including guar gum, alerting users of these products to consume adequate fluid and to avoid using such products if the person has previously experienced any difficulty in swallowing. The intent of this document is to make it clear that the addition of this proposed warning statement in product labeling is not a sufficient basis to permit the continued marketing of OTC weight control drug products containing guar gum.

DATES: Written comments by April 5, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 30, 1990 (55 FR 45782), FDA proposed to require a warning for all OTC drug products containing water-soluble gums, e.g., guar gum, as active ingredients. The required warning would state the following:

Warning: (Select one of the following, as appropriate: Take or mix) this product with at least 8 ounces (a full glass) of water or other fluid. Taking this product without adequate fluid may cause it to swell and block your throat or esophagus and may cause choking. Do not take this product if you have ever had difficulty in swallowing or have any throat problems. If you experience chest pain, vomiting, or difficulty in swallowing or breathing after taking this product, seek immediate medical attention.

In the same issue of the **Federal Register**, the agency issued another notice of proposed rulemaking stating that certain ingredients in OTC weight control drug products are not generally recognized as safe and effective and are misbranded (55 FR 45788). In that proposal, the agency reclassified guar gum into Category II (not generally recognized as safe and effective) (55 FR 45788 at 45790 to 45791). FDA stated that data indicate a safety hazard of esophageal obstruction from the use of weight control drug products containing guar gum. The agency mentioned that it had issued a number of regulatory letters to manufacturers of weight control drug products containing guar gum and requested the manufacturers to cease distribution of such products.

In this notice the agency makes clear that the addition, in product labeling, of the proposed warning statement for water-soluble gums (55 FR 45782) does not permit marketing of OTC weight control drug products containing guar gum. FDA has taken, and will continue to take, regulatory action to remove these hazardous products from the marketplace.

Dated: February 26, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-5233 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period; withdrawal of previously proposed amendment.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment Number 43 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has proposed further revisions to four rules which are intended to make those rules as effective as the corresponding Federal

regulations concerning termination of jurisdiction, public roadways, sedimentation pond and impoundment spillways, and certification of primary roads. The proposed revisions concerning certification of primary roads supersede the revisions proposed by Ohio in Program Amendment Number 47. Ohio is therefore withdrawing Program Amendment Number 47.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on April 5, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on April 1, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on March 21, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated November 17, 1989 (Administrative Record No. OH-1240), the Director of OSM notified Ohio of a number of Federal regulations promulgated between June 9, 1988 and July 30, 1989 for which OSM had determined that the corresponding Ohio rules were now less effective than the new Federal counterparts. In response to the OSM notification, Ohio submitted proposed Program Amendment No. 43 by letter dated January 16, 1990 (Administrative Record No. OH-1265). This amendment proposed revisions to seven sections of the Ohio Administrative Code (OAC).

OSM announced receipt of proposed Program Amendment No. 43 in the February 2, 1990 **Federal Register** (55 FR 3604), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on March 5, 1990. The public hearing scheduled for February 27, 1990 was not held because no one requested an opportunity to testify.

By letter dated August 17, 1990 (Ohio Administrative Record No. OH-1354), Ohio submitted Revised Program Amendment Number 43 containing two further proposed revisions to OAC Section 1501:13-9-04. These two revisions were intended to make the proposed rule as effective as the corresponding Federal regulations concerning sediment pond and impoundment spillways.

OSM announced receipt of Revised Program Amendment No. 43 in the September 6, 1990 **Federal Register** (55 FR 36661), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on October 9, 1990. The public hearing scheduled for October 1, 1990 was not held because no one requested an opportunity to testify.

By letter dated December 7, 1990, Ohio submitted Program Amendment Number 47 (Ohio Administrative Record No. OH-1415). This amendment concerned the certification by surveyors of the design and construction of primary roads. OSM approved Program Amendment Number 47 in the **Federal Register** on February 26, 1991.

On January 7, 1991, OSM sent its comments to Ohio on both Program Amendment Number 43 and Revised Program Amendment 43 (Ohio Administrative Record No. OH-1430). In response to OSM's letter, Ohio submitted additional proposed changes to Revised Program Amendment Number 43 on February 12, 1991 (Ohio Administrative Record No. OH-1454). This revised amendment proposes further revisions to three rules which are in addition to or which replace the revisions proposed in the previous two versions of the amendment. Ohio is also deleting previously proposed changes to one other rule. All other remaining revisions previously proposed by Ohio in Program Amendment Number 43 and Revised Program Amendment Number 43 are unchanged.

The new revisions proposed in the February 12, 1991 submission of Revised Program Amendment Number 43 are discussed briefly below:

I. Termination of Jurisdiction

OAC 1501:13-1-01 paragraphs (D)(1) and (2): Ohio proposed the addition of these two paragraphs in Program Amendment Number 43. Ohio is now withdrawing these proposed paragraphs because the corresponding Federal regulations were remanded by the court as contrary to SMCRA (National *Wildlife Federation* v. *Lujan*, Nos. 88-2416, 88-3345, 883-586, 88-3635, 89-0039, 89-0136, and 89-0141 (D.D.C. August 30, 1990)).

II. Public Roadways

OAC 1501:13-1-02 paragraph (E)(1)(d): Ohio is rewriting this paragraph to specify that the term "affected area" may not include public roadways, provided that:

(1) The public roadway was in existence prior to the application for the permit;

(2) The effect on the public roadway from mining use will be minor; and

(3) The public roadway is incidentally, rather than directly, part of the mining operation.

OAC 1501:13-1-02 paragraph (YYYY): Ohio is rewriting this paragraph to specify that the term "road" may not include public roadways outside the permit area, provided that the public roadway meets the new criteria proposed in OAC 1501:13-1-02 paragraph (E)(1)(d) regarding public roadways which do not fall under 'the definition of "affected area."

III. Sedimentation Pond and Impoundment Spillways

OAC 1501:13–9–04 paragraphs (G)(3)(b)(iii) and (H)(1)(h)(iii): Ohio is rewriting these paragraphs to clarify that single spillways authorized by proposed OAC 1501:13–9–04 paragraphs (G)(3)(b) (i) and (ii) and (H)(l)(h) (i) and (ii) shall have open channels.

OAC 1501:13–9–04 paragraph (H)(l)(h)(iii)(b): Ohio is correcting a typographical error in this paragraph. The corrected paragraph proposes that impoundments may use earth- and grass-lined single spillways to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

IV. Certification of Primary Roads

OAC 1501:13–10–01 paragraphs (G)(1) (a) and (b): Ohio is rewriting these paragraphs to clarify that separate certifications are required for the design and construction of primary roads. Those certifications must meet the requirements of OAC 1501:13–4–05 paragraph (M) and OAC 1501:13–4–14 paragraph (L) and must be submitted in a report to the Chief of the Ohio Department of Natural Resources, Division of Reclamation. These reports must certify that the construction or reconstruction of primary roads was completed as designed and in accordance with the approved plan.

Ohio is also rewriting OAC 1501:13–10–01 paragraphs (G)(1) (a) and (b) to include provisions for the certification of primary roads by a surveyor. In Program Amendment Number 47, Ohio revised OAC 1501:13–10–01 paragraph (G)(1) to provide that the certification of the design, construction, or reconstruction of primary roads shall be by an engineer, by a surveyor, or jointly by an engineer and a surveyor to the extent such joint certification is required by State law. OSM approved Program Amendment Number 47 on February 26, 1991.

In the February 12, 1991 submission of Revised Program Amendment Number 43, Ohio reiterated the provisions for certification of roads by a surveyor in approved Program Amendment Number 47. Since the text of proposed paragraphs (G)(1) (a) and (b) in Revised Program Amendment Number 43 is different from and supersedes the language in Program Amendment Number 47, Ohio is withdrawing Program Amendment Number 47.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 pm. on March 21, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 22, 1991.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 91–5179 Filed 3–5–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Service

32 CFR Part 299a

[NSA Reg. No. 10–35]

Privacy Act Systems of Records—Disclosures and Amendment Procedures—Specific Exemptions, National Security Agency

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Proposed exemption rule.

SUMMARY: The National Security Agency/Central Security Service (NSA/CSS) proposes to add a specific exemption rule for a new record system subject to the Privacy Act of l974, as amended, (5 U.S.C. 552a). The proposed record system is identified as GNSA18, entitled NSA/CSS Operations Files.

DATES: Comments regarding this proposed exemption rule must be received on or before April 5, 1991, to be considered by the agency.

ADDRESSES: Forward any comments to the Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755–6000. Telephone (301) 688–6527.

SUPPLEMENTARY INFORMATION: The proposed new exempt record system will be maintained within the National Security Agency/Central Security Service. The proposed specific exemptions are required to protect the information contained therein from certain disclosures. These proposed specific exemption rules are to be added to existing NSA/CSS exemption rules found at 32 CFR 299a.10.

List of subjects in 32 CFR Part 299a.

Privacy Act.

Accordingly, NSA/CSS proposes to add a new exemption rule to 32 CFR part 299a as follows:

PART 299a—PRIVACY ACT SYSTEMS OF RECORDS—DISCLOSURES AND AMENDMENT PROCEDURES—SPECIFIC EXEMPTIONS, NATIONAL SECURITY AGENCY

1. Authority citation for 32 CFR Part 299a continues to read as follows:

Authority: 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 552, the Freedom of Information Act as amended by Public Law 93-502; Public Law 86-36, Public Law 88-290 and 18 U.S.C. 798.

2. Section 299a.10 is proposed to be amended by adding a new paragraph (b)(18) as follows:

§ 299a.10 Specific exemptions.

* * * * *

(b) Systems of records subject to specific exemptions: * * *

(18) *System Identification and Name*—GNSA18, NSA/CSS Operations Files.

Exemption—Portions of this record system may be exempted from subsections of 5 U.S.C. 552a (c)(3), (d)(1)-(5), (e)(4)(G)-(I), and (f)(1)-(5).

Authority—5 U.S.C. 552a(k) (1), (2) and (5).

Reasons—Subsection (c)(3) because there may be occasions when making an accounting available to the individual named in the record at his or her request, would reveal classified information. The release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies.

Subsection (d) because granting access and/or subsequent amendment to the record would reveal classified information. It may also alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy. The NSA/CSS may refuse to confirm or deny the existence of a particular record because to do so would reveal classified information.

Subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I). Although the NSA/CSS has published procedures whereby an individual can be notified if a particular record system contains information about themselves; how to gain access to that information; and the source of the information, there may be occasions when confirming that a record exists, granting access, or giving out the source of the information would reveal classified information.

Subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system. Also, because this record system is exempt from the individual access provisions of subsection (d).

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5268 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-3910-3]

National Emission Standards for Hazardous Air Pollutants; Announcement of Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of agreement on negotiated regulation.

SUMMARY: This announcement summarizes the major provisions and concepts of the negotiated rule for volatile hazardous air pollutants from equipment leaks at organic chemical manufacturing facilities, and publishes verbatim the regulatory language agreed to by the negotiating committee. The purpose of this notice is to inform interested parties and potentially regulated facilities of the regulatory agreement to which the committee has concurred in principle.

On April 25, 1989 (54 FR 17944), EPA announced its intent to form an advisory committee to negotiate issues leading to a new approach for regulation of fugitive emissions of volatile organics from equipment leaks (pumps, valves, etc.) associated with chemical production process units. A meeting with interested parties was held in Washington, DC on May 15, 1989 to discuss the establishment of such a committee. On September 12, 1989, EPA announced the formation of the committee under the Federal Advisory Committee Act (54 FR 37725). The EPA formed a committee including representatives of various affected industry and trade groups, State and local air pollution agencies, and an environmental group.

The Committee met periodically over a one-year period and has successfully agreed in principle to the provisions and language of an equipment leak regulation. The Committee will continue to work on a preamble for the future proposal of the rule and will enter into a final agreement after the preamble is completed. The EPA plans to propose this rule in late 1991 as part of hazardous organic national emission standards for hazardous air pollutants (NESHAP), or NON, that will cover other emission points as well as equipment leaks at organic chemical plants.

ADDRESSES: *Docket.* A docket, number A-89-10, containing information relating to the negotiations is available for public inspection between 8:30 am. and 3:30 p.m., Monday through Friday, at Air Docket Section (LE-131), Waterside Mall, room M1500, U. S. EPA, 401 M Street, SW. Washington, DC 20460. A reasonable fee may be charged for copying. Today's notice is not a rulemaking action and the Agency is not soliciting comments.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Meyer or Mr. Rick Colyer, telephone (919) 541-5254 or 5262, respectively. The address for both is Standards Development Branch (MD-13), Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

In the early 1980's, EPA determined that fugitive emissions of volatile organic compounds (VOC) and hazardous organic compounds from equipment leaks (pumps, valves, etc.) contribute significantly to air quality problems. The EPA estimates that equipment leak emissions account for roughly one-third of total organic emissions from chemical plants. Moreover, because they are released near the ground, the impact from fugitive emissions is 10 to 40 times greater than equal releases from stacks. Recent reports completed under Section 313 of the Superfund Amendments and Reauthorization Act (SARA) included over 385,000 tons per year from fugitive sources.

Existing regulations adopted under sections 111 and 112 of e Clean Air Act and in State Implementation Plans (SIP's) have been effective in heightening awareness of the significance of equipment leaks and in stimulating control efforts. The rules basically require that equipment in place be inspected periodically for leaks with a portable hydrocarbon detector. If concentrations in excess of 10,000 parts per million (ppm) are found, the component is identified as a "leaker" and maintenance is required. This

approach is known as "leak detection and repair" (LDAR). When these rules were established, EPA estimated that emissions would be reduced by about 60 to 70 percent and that after control, leak frequencies would be approximately 5 percent.

Data gathered over the past couple of years on equipment leaks at some chemical plants indicate that lower leak frequencies can be achieved. These data, however, did not indicate how low leak frequencies could be obtained at all chemical plants. Consequently, EPA saw a need for a new approach that would establish an effective regulation that would achieve low leak frequencies at all chemical plants. It was recognized that establishing such a regulation for as broad and varied a source category as chemical production units would be difficult. The challenges included determining for all plants how to achieve low leak frequency with a simple set of rules, how to provide more flexibility in achieving low leak rates than that provided by LDAR alone, how to apply standards across the industry using data from only a part of the industry, and EPA's need to establish standards consistent with the maximum achievable control technology (MACT) requirements of the Clean Air Act Amendments of 1990 (CAAA).

Accordingly, on April 25, 1989, EPA announced its intention to establish a committee to negotiate a new approach for control of volatile organic chemical equipment leaks (54 FR 17944), and conducted an initial informational meeting on May 15, 1989 to determine among potentially interested parties whether negotiation would be a desirable approach. The participants at the initial meeting responded favorably to the concept of negotiation, and on September 12, 1989, EPA established a negotiating committee (54 FR 37725). The Committee met over a period of one year, holding nine 2-day meetings and one 1-day meeting to resolve the various issues related to developing a MACT standard for equipment leaks. The Committee members are listed in Appendix A.

The Committee considered the many factors and uncertainties associated with regulating equipment leaks at a wide variety of chemical plants and developed an acceptably balanced approach, weighing the need to be flexible, the technical uncertainties, the requirement for MACT standards, and the data limitations. At the final negotiating session, the Committee members conceptually resolved all outstanding major issues and decided to reach final agreement through a 2-step process. The Committee members would first agree to the regulatory language to be proposed. This "agreement in principle" has been reached by all Committee members and the negotiated regulatory language is contained in Appendix B. The Committee expects to sign a final agreement after a draft preamble to the regulation describing in detail the scope, application, effect, and rationale has been concurred on by the Committee. The final agreement will represent the consensus of the Committee on a regulation and preamble to be proposed by the Agency, and all Committee mmembers will agree to support the regulation as long as EPA proposes and promulgates the regulation and its preamble substantively unchanged from those' that are the subject of the final agreement.

The consensus agreement reached by the Committee, as spelled out in the attached regulatory language, also serves to notify nine chemical companies of voluntary action they previously committed to taking. These companies were identified prior to these negotiations by EPA in its Air Toxics Exposure and Risk Information System (ATERIS) database as having some plants with relatively high health risk. After several meetings between representatives of these companies and EPA, the companies agreed to begin a voluntary LDAR program and timely implementation of the consensus agreement as soon as the regulatory requirements were available.

II. Summary of Negotiated Standards

The following is a general summary of the requirements and concepts of the negotiated regulation. It is not a detailed description of the provisions, nor does it contain the rationale or basis developed by the Committee for the various provisions. The reader is referred to the actual negotiated regulatory language (Appendix B) for detail of specific provisions.

The purpose of this announcement is to make interested parties and owners or operators potentially subject to these standards aware of the forthcoming regulatory requirements so that they will be better prepared when the rule is actually issued. The covered chemicals and processes are listed respectively in §§ XX.X8–1 and XX.X8–2 of the negotiated rule (Appendix B). A detailed preamble describing the rationale and basis for the regulatory requirements for equipment leaks will accompany the proposal of the rule, to be contained within a broader HON, covering not only equipment leaks, but also storage, transfer, process vents, and wastewater emissions at chemical plants. The HON is scheduled for proposal in Fall 1991, with promulgation scheduled for Fall 1992. The Agency is not now soliciting comments on the attached regulatory language. Interested persons will have an opportunity to comment when the broader regulation is proposed.

Applicability. The standards would apply to equipment in volatile hazardous air pollutant (VHAP) service 300 or more hours per year associated with any of the 453 processes listed in the negotiated regulation that make or use as a reactant one of the organic VHAPs listed in § XX.X8–1 of the regulation. They would also apply to equipment handling specific chemicals for a limited number of non-SOCMI processes listed in the negotiated rule. Petroleum refinery processes will not be covered by the attached negotiated regulation; a separate rulemaking will be conducted for those processes.

The equipment affected are valves, pumps, connectors, compressors, pressure relief devices, open-ended lines, sampling connection systems, instrumentation systems, agitators, product accumulator vessels, and closed-vent systems and control devices. "In VHAP service" means the equipment contains or contacts a fluid that is 5 percent or greater VHAP's.

The standards would also split the covered processes into 5 distinct groups to which the regulation would apply over time. The rule would apply to the first group 6 months after promulgation. Thereafter, the rule would become applicable to another group every 3 months until all the processes were covered.

Pumps and Valves. The regulation is structured similarly for pumps and valves. Standards for both would be implemented in three phases and both standards have associated quality improvement programs (QIP' s). The first and second phases for both types of equipment consist of an LDAR program, with lower leak definitions in the second phase. The LDAR program involves a periodic check for organic vapor leaks with a portable instrument; if leaks are found, they must be repaired within a certain period of time. In the third phase, the periodic monitoring (a work practice standard) would be coupled with a base performance level (i.e., allowable percent leaking components).

As part of the base program, pumps would require monthly monitoring using an instrument and weekly visual inspection. Valves would initially require quarterly monitoring, but the length of time between monitoring could be increased if the percent leaking valves demonstrate incrementally better

performance, as specified in the rule, over the base performance level.

Special provisions apply to pumps in food/medical service, pumps in polymerizing monomer service, "leakless" pumps, and unsafe- and difficult-to-monitor valves. Owners or operators can take partial credit in the calculation of percent leaking valves for valves permanently removed from the process units. Plants with less than 250 valves in VHAP service are subject only to LDAR and not the base performance level. A limited number of "nonrepairable" valves, i. e., those that cannot be repaired without a process unit shutdown, may be excluded in the calculation of percent leaking valves.

If the base performance levels for a type of equipment are not achieved, based on a rolling average of monitoring results, owners or operators must, in the case of pumps, enter into a QIP, and in the case of valves, either enter into a QIP or implement monthly LDAR. The QIP is a concept that enables plants exceeding the base performance levels to eventually achieve the desired levels without incurring penalty or being in a noncompliance status. As long as the requirements of the QIP are met, the plant is in compliance. The basic QIP consists of information gathering, determining superior performing technologies, and replacing poorer performers with the superior technologies until the base performance levels are achieved.

Connectors. The rule also provides for performance standards for connectors in terms of percent leaking connectors in each process unit. The negotiated standard for connectors is not phased in, i. e., the performance level applies as soon as the rule is effective for the process unit. Consistent achievement of the base performance level would result in monitoring being required less frequently. Failure to achieve the base performance level would cause the plant to remain in an annual monitoring cycle.

Special provisions would apply to existing screwed connectors that are 2 inches or less and to connectors that are inaccessible or unsafe to monitor or repair. A limited allowance for "nonrepairable" connectors would be allowed if disturbed connectors are monitored within 3 months. Credits for connectors removed from the process unit would be allowed in the calculation of percent leaking connectors (or performance level).

Other equipment. Standards for compressors, open-ended lines, pressure relief devices, sampling connection systems, and closed vent systems and control devices remain essentially unchanged from existing regulations (see 40 CFR part 61, Subpart V). Agitators must meet LDAR requirements, but have no base performance levels. Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service are subject to instrument monitoring only if evidence of a potential leak is found through sight, sound, or smell. Instrumentation systems consist of smaller pipes and tubing that carry samples of process fluids to be analyzed to determine process operating conditions.

Delay of repair. Under certain conditions delay of repair beyond the required 15 days may be acceptable. Examples of these situations include where (1) a piece of equipment cannot be repaired without a process unit shutdown, (2) equipment is taken out of VHAP service, (3) emissions from repair will exceed emissions from delay of repair until the next shutdown, (4) pumps with single mechanical seals are replaced with dual mechanical seals, and (5) valve assembly supplies have been depleted from stocks.

Alternative standards. Generally, an alternative means of emission limitation may be used if an owner or operator can demonstrate emission reductions equal to or better than that required by the standards. Specific alternative standards have been written for batch processes and enclosed buildings. Batch processes can choose either to meet similar standards to those for continuous processes, with monitoring frequency prorated to time in use, or to periodically pressure test the entire system. Enclosed buildings may forego monitoring if the building is kept under a negative pressure and all emissions are routed through a closed vent system to an approved control device.

Test methods and Procedures. The standards would retain the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A "leak" is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. Method 18 is to be used to determine organic content of a process stream. Test procedures using either a gas liquid testing or a for pressure the batch system are specified to detect for leaks.

Recordkeeping. The standards would require a readily accessible recordkeeping system. Records required include identification of equipment that would be covered by the standards, identification of equipment that is found to be leaking during a monitoring period and when it is repaired, testing associated with batch processes, design specifications of closed vent systems and control devices, test results from performance tests or testing process streams for organic content, and information required by equipment in QIP. Other recordkeeping requirements also apply, and the reader is referred to that section of the negotiated rule for more detail (see Appendix B).

Reporting. Owners and operators would be required to submit an initial report that describes the source and a summary of the equipment subject to these standards. Every six months, a report must be submitted that summarizes the results of monitoring and performance tests conducted during that period, changes to the process unit, changes in monitoring frequency or monitoring alternatives, and/or initiation of a QIP. Reports can be submitted on electronic media where acceptable to both the Administrator and the owner or operator.

Dated: February 25, 1991.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

Appendix A—List of Negotiators

Negotiator/Affiliation

Robert L. Ajax, EPA.
Alfred Bickum, International Institute for Synthetic Rubber Producers.
Bruce Bowers, Standard Chlorine.
Linda Curran, Amoco Oil.
David Doniger/Allen Hershkowitz, Natural Resources Defense Council.
David Dunn, Sterling Chemicals, Inc.
Larry Goodheart/Ellen Siegler, American Petroleum Institute.
Jack Kace, Pharmaceutical Manufacturers Association.
Thomas Kittleman, Chemical Manufacturers Association.
Robert Majewski, Northeast States for Coordinated Air Use Management.
Les Montgomery, Texas Air Control Board.
Harvel Rogers, Jefferson County (Kentucky) Air Pollution Control District.
Gustave Von Bodungen, Louisiana Department of Environmental Quality.

Facilitator

Philip J. Harter, Esq., Consultant to EPA.

Observer

Nicolas Garcia, Office of Management and Budget.

Appendix B—National Emission Standard For Equipment Leaks (Fugitive Emission Sources)

Section XX.XO Applicability and Designation of Sources

(a) The provisions of this subpart apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, product accumulator vessels, instrumentation systems, and control devices or systems required by this subpart that are intended to operate in volatile hazardous air pollutant (VHAP) service 300 hours or more during the calendar year within a process unit listed in

(1) Paragraph (b) of this section that uses as a reactant or makes as an intermediate or final product any of the chemicals listed in § XX.X8–1, or

(2) Paragraph (c) of this section.

(b) (I) The provisions of this subpart are applicable to the following process units as listed in § XX.X8–2 on and after the designated dates:

(i) Group I: (½ year after promulgation)

(ii) Group II: (¾ year after promulgation)

(iii) Group III: (1 year after promulgation)

(iv) Group IV: (1¼ years after promulgation)

(v) Group V: (1½ years after promulgation)

(2) The owner or operator of an affected process unit in a later group may elect to apply the applicability date of an earlier group.

(3) Any process unit listed in § XX.X8–2 that does not use as a reactant or make as an intermediate or final product any of the chemicals listed in § XX.X8–1 is exempt from the provisions in § XX.X2–1 through § XX.X2–13. The owner or operator shall maintain records as required in § XX.X8 (k).

(c) The provisions of this subpart apply (6 months after publication of the final rule in the **Federal Register** to the the following process units, and designated VHAPs only, as defined in § XX.X1:

(1) Styrene-butadiene rubber production (butadiene, styrene).

(2) Polybutadiene production (butadiene).

(3) Chlorine production (carbon tetrachloride).

(4) Pesticide production (carbon tetrachloride, methylene chloride, ethylene dichloride).

(5) Chlorinated hydrocarbon use (carbon tetrachloride, methylene chloride, tetrachloroethylene, chloroform, and ethylene dichloride).

(6) Pharmaceutical production (carbon tetrachloride, methylene chloride).

(7) Miscellaneous butadiene use (butadiene).

(d) While the provisions of this subpart are effective, equipment to which this subpart applies that are also subject to the provisions of

(1) 40 CFR part 60, will be required to comply only with the provisions of this subpart, except for each pump and compressor equipped with a dual mechanical seal system that is in VOC service, or

(2) 40 CFR part 61, will be required to comply only with the provisions of this subpart.

(e) The provisions of this subpart do not apply to any petroleum process unit regardless of whether the unit supplies feedstocks, that include chemicals listed in § XX.X8–1, to chemical processes that are subject to the provisions of this subpart.

Section XX.X1 Definitions

All terms used in this subpart shall have the meaning given them in the Act, in subpart A of 40 CFR part 63, and in this section as follows:

Batch Process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (e.g., connectors, reactors, valves, pumps, etc.) configured to produce a specific product or intermediate by a batch process.

Chlorinated hydrocarbon use means a process that produces one or more of the following products using chloroform, carbon tetrachloride, ethylene dichloride, methylene chloride or tetrachloroethylene: chlorinated paraffins, Hypalon®, OBPA/1,3-diisocyanate, polycarbonate, polysulfide rubber, and symmetrical tetrachloropyridiene.

Chlorine production means a process that uses carbon tetrachloride as a diluent for nitrogen trichloride or as a scrubbing liquid to recover chlorine from the liquefaction of tail gas.

Closed-loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed-vent system.

Closed-vent system means a system that is not open to atmosphere and that is composed of piping, connections and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back into the process.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, glass, or glass-lined as described in § XX.X2–13(i).

Control device means an enclosed combustion device, vapor recovery system (including devices used for temporary recovery and ultimate disposal, such as carbon adsorption), or flare.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, product accumulator vessel, and instrumentation system in VHAP service; and any control devices or systems required by this subpart.

First attempt at repair means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere.

In food/medical service means that a piece of equipment in VHAP service contacts a process stream used to manufacture a Food and Drug Administration regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications,

(2) An exothermic reaction which is a safety hazard,

(3) The intended reaction to be slowed down or stopped, or

(4) An undesired side reaction to occur.

In gas/vapor service means that a piece of equipment in VHAP service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in VHAP service is not in gas/vapor service or in light liquid service.

In light liquid service means that a piece of equipment in VHAP service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the VHAPs is greater than 0.3 kilopascals (kPa) at 20°C;

(2) The total concentration of the pure VHAP constituents having a vapor pressure greater than 0.3 kPa at 20°C is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions.

(Note: Vapor pressures may be determined by the methods described in § 60.485 (e)(1).)

In liquid service means that a piece of equipment in VHAP service is not in gas/vapor service.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kPa below ambient pressure.

In VHAP service means that a piece of equipment either contains or contacts a fluid (liquid or gas) that is at least 5 percent by weight a volatile hazardous air pollutant (VHAP) as determined according to the provisions of § XX.X5(d). The provisions of § XX.X5(d) also specify how to determine that a piece of equipment is not in VHAP service.

In VOC service means, for the purposes of this subpart, that:

(1) The piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight (see 40 CFR 60.2 for the definition of volatile organic compound or VOC, and 40 CFR 60.485(d) to determine whether a piece of equipment is not in VOC service) and

(2) The piece of equipment is not in heavy liquid service as defined in 40 CFR 60.481.

In-situ sampling systems means nonextractive samplers or in-line samplers.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 0.5 inches and connectors greater than nominally 0.75 inches associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquid dripping include puddling or new stains that are indicative of an existing evaporated drip.

Miscellaneous butadiene use means a process that produces one or more of the following butadiene products: tetrahydrophtalic anhydride (THPA), methylmethacrylatebutadiene styrene (MBS) resins, Captan®, Captafol®, 1,4-hexadiene, adiponitrile, dodecanedionic acid, butadienefurfural cotrimer, methylmethacrylate acrylonitrile-butadiene styrene (MABS) resins, and ethylidene norbornene.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Pesticide production means a process that uses one or more of the following chemicals as a reactant or a processing aid in the synthesis of a pesticide intermediate or product: carbon tetrachloride, ethylene dichloride, and methylene chloride.

Petroleum means the crude oil or natural gas liquids removed from the earth and oils derived from tar sands, shale, and coal.

Petroleum refining process unit means a process unit that for the purpose of producing transportation fuels (such as gasoline and diesel fuels), heating oils (such as distillate and residual fuel oils), or lubricants; separates petroleum; or separates, cracks, or reforms unfinished petroleum derivatives. Examples of such units include, but are not limited to, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, and thermal processes.

Pharmaceutical production means a process that synthesizes pharmaceutical intermediate or final products using carbon tetrachloride or methylene chloride as a reactant or process solvent.

Plant site means a contiguous or adjoining area under the control of a single owner or operator that contains one or more process units to which these standards apply. Plant site does not include those units to which these standards do not apply.

Polybutadiene production means a process that produces polybutadiene through the polymerization of 1,3-butadiene.

Polymerizing monomer means a molecule or compound usually containing carbon and of relatively low molecular weight and simple structure (e.g., hydrogen cyanide, acrylonitrile, styrene), which is capable of conversion to polymers, synthetic resins or elastomers by combination with itself due to heat generation caused by a pump mechanical seal surface, contamination by a seal fluid (e.g., organic peroxides or chemicals that will form organic peroxides), or a combination of both with the resultant polymer buildup causing rapid mechanical seal failure.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device. Process unit means equipment that uses or produces a VHAP or its derivatives as intermediates or final products, and is listed in § XX.X0(b) and (c). For the purpose of this regulation, process unit includes all equipment associated with the unit process operation (e.g., reactors, distillation, etc.), storage and transfer of feed material to the unit process operation and final or intermediate product from the unit process operation, and operations treating wastewater from the unit process operation.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown, is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

Product accumulator vessel means any distillate receiver, bottoms receiver, surge control vessel, or product separator in VHAP service that is vented to the atmosphere either directly without first going through a pressure relief device or through a vacuum producing system. A product accumulator vessel is in VHAP service if

the liquid or the vapor in the vessel is at least 5 percent by weight VHAP.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart.

Screwed connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Semiannual means a 6-month period; the first semiannual period concludes on the last day of the last month during the 180 calendar days following initial startup for new sources; and the first semiannual period concludes on the last day of the last month during the 180 calendar days after the effective date of a specific subpart that references this subpart for existing sources unless an earlier month is designated by the owner or operator.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Startup means the setting in operation of a process unit or control device.

Styrene-butadiene rubber production means a process that produces styrene-butadiene copolymers, whether in solid (elastomer) or emulsion (latex) form.

Volatile hazardous air pollutant or *VHAP* means a substance listed in § XX.X8-1.

Section XX.X2-1 Standards: General

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of § XX.X2-1 to § XX.X2-13 for each new and existing source as required in 40 CFR 61.05, except as provided in § XX.X3 and § XX.X4.

(b) Compliance with this subpart will be determined by review of records, review of performance test results, and inspection using the methods and procedures specified in § XX.X5.

(c)(1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of § XX.X2-2, § XX.X2-3, § XX.X2-5, § XX.X2-6, § XX.X2-7, § XX.X2-8, § XX.X2-9, § XX.X2-11, § XX.X2-12, and § XX.X2-13 are provided in § XX.X4.

(2) If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of § XX.X2-2, § XX.X2-3, § XX.X2-5, § XX.X2-6, § XX.X2-7, § XX.X2-8, § XX.X2-9, § XX.X2-11, § XX.X2-12, and § XX.X2-13, the owner or operator shall comply with the alternative.

(d) Each piece of equipment in a process unit to which this subpart applies shall be identified such that it can be distinguished readily from equipment that is not subject to this subpart. Identification of the equipment does not require physical tagging of the equipment. For example the equipment may be identified on a plant site plan, in log entries, or by designation of process unit boundaries by some form of weatherproof identification.

(e) Equipment that is in vacuum service is excluded from the requirements of § XX.X2-2 to § XX.X2-13 if it is identified as required in § XX.X6(b)(5).

(f) Equipment that is in VHAP service less than 300 hours per calendar year is excluded from the requirements of § XX.X2-2 to § XX.X2-13 and § XX.X4-2 if it is identified as required in § XX.X6(b)(7).

(g) The provisions for existing process units apply to process units that commenced construction or reconstruction before *[Insert date of publication of proposal rule in the* **Federal Register**]; the provisions for new process units apply to units the construction or reconstruction of which commences on or after *[Insert date of publication of proposal rul in the* **Federal Register**].

Section XX.X2-2 Standards: Pumps in Light Liquid Service

(a) The provisions of this section apply to each pump that is in light liquid service.

(1) The provisions are implemented on the specified applicability dates designated in § XX.X0(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date, and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements.

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b) (1) The owner or operator of an affected process unit shall monitor each pump monthly to detect leaks by the method specified in § XX.X5(b) and shall comply with the requirements of paragraphs (a) through (d) of this section, except as provided in § XX.X2-1(c) and paragraphs (e) through (h) of this section.

(2) The instrument reading, as determined by the method as specified in § XX.X5(b), that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 ppm or greater.

(ii) For Phase II, an instrument reading of 5,000 ppm or greater.

(iii) For Phase III, an instrument reading of

(A) 5,000 ppm or greater for pumps handling polymerizing monomers,

(B) 2,000 ppm or greater for pumps in food/medical service, and

(C) 1,000 ppm or greater for all other pumps.

(3) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.

(c) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (c) (3) of this section or § XX.X2-10.

(2) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(i) Tightening of packing gland nuts.

(ii) Ensuring that the seal flush is operating at design pressure and temperature.

(3) For pumps in Phase III to which a 1,000 ppm leak definition applies, repair is not required unless an instrument reading of 2,000 ppm or greater is detected.

(d) (1) The owner or operator shall decide no later than the first monitoring period whether to calculate percent leaking pumps on a process unit basis or on a plant site basis. Once the owner or operator has decided, all subsequent percent calculations shall be made on the same basis.

(2) If, in Phase III, calculated on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or 3 pumps in a process unit (or plant site) leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § XX.X3-2.

(3) The number of pumps at a process unit (or plant site) shall be the sum of all

the pumps in VHAP service, except that pumps found leaking in a continuous process unit within 1 month after startup shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$P_L=((P_L-P_S)/(P_T-P_S))\times 100$$

where:

$\%P_L$=percent leaking pumps

P_L=number of pumps found leaking as determined through monthly monitoring as required in paragraphs (b) (I) and (2) of this section

P_T=Total pumps in VHAP service, including those meeting the criteria in paragraphs (e) and (f) of this section

P_S=number of pumps leaking within 1 month of startup during the current monitoring period

(e) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the following requirements are met:

(1) Each dual mechanical seal system is:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § XX.X2–ll; or.

(iii) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(2) The barrier fluid is not in light-liquid VHAP service.

(3) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(i) If there are indications of liquid dripping from the pump seal at the time of the weekly inspection, the pump shall be monitored as specified in § XX.X5(b) to determine the presence of VHAP in the barrier fluid.

(ii) If an instrument reading of 1,000 ppm or greater is measured, a leak is detected.

(5) Each sensor as described in paragraph (e) (3) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(6) (i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(ii) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(6)(i) of this section, or if, based on the criteria established in paragraph (e)(6) (i) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(iv) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(f) Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from paragraphs (b)(l) and (2) of this section.

(g) Any pump equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § XX.X2–ll is exempt from the requirements of paragraphs (b)-(e).

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b) (3) and (e) (4) of this section, and the daily requirements of paragraph (e) (5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

Section XX.X2–3 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevent leakage of process fluid to atmosphere, except as provided in § XX.X2–1(c) and paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(I) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § XX.X2–ll; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) The barrier fluid shall not be in light liquid service.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e) (I) Each sensor as required in paragraph (d) of this section shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e) (2) of this section, a leak is detected.

(g) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–l0.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § XX.X2–l1, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § XX. X6 (b) (2), to operate as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is demonstrated to be operating with an instrument reading of less than 500 ppm above background, as measured by the method specified in § XX.X5(c); and

(2) Is tested for compliance with paragraph (i)(l) of this section initially upon designation, annually, and at other times requested by the Administrator.

Section XX.X2–4 Standards: Pressure Relief devices in Gas/vapor Service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 ppm above background except as provided in paragraph (b) of this section, as measured by the method specified in § XX.X5(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar

days after each pressure release, except as provided in § XX.X2–l0.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § XX.X5(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § XX.X21l is exempt from the requirements of paragraphs (a) and (b) of this section.

Section XX.X2–5 Standards: Sampling Connection Systems.

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed-vent system, except as provided in § XX.X2–l(c).

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall:

(1) Return the purged process fluid directly to the process line or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § XX.X2–11.

(c) *In-situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

Section XX.X2–6 Standards: Open-ended Valves or Lines

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § XX.X2–l(c).

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line or during maintenance or repair.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

Section XX.X2–7 Standards: Valves in Gas/Vapor Service and in Light Liquid Service

(a) The provisions of this section apply to valves that are either in gas service or in light liquid service.

(1) The provisions are implemented on the specified applicability dates set forth in § XX.X0(b) for existing and new process units in the phases specified below:

(i) For each group of existing process units, the phases of the standard are:

(A) Phase I, beginning on the applicability date;

(B) Phase II, beginning 1 year after the applicability date; and

(C) Phase III, beginning 2½ years after the applicability date.

(ii) For new process units, the applicable phases of the standard are:

(A) After initial startup, comply with the Phase II requirements.

(B) Beginning 1 year after startup, comply with the Phase III requirements.

(2) The owner or operator of an affected process unit may elect to meet the requirements of a later phase during the time period specified for an earlier phase.

(b) The owner or operator of an affected process unit shall monitor all valves, except as provided in §§ XX.X2–l(c), and (h) and (i) of this section, at the intervals specified in paragraphs (c) and (d) of this section and shall comply with all other provisions of this section, except as provided in § XX.X2–l0, § XX.X4–l, § XX.X4–2, and § XX.X4–3.

(1) The valves shall be monitored to detect leaks by the method specified in § XX.X5(b).

(2) The instrument reading that defines a leak in each phase of the standard is:

(i) For Phase I, an instrument reading of 10,000 ppm or greater.

(ii) For Phase II, an instrument reading of 500 ppm or greater.

(iii) For Phase III, an instrument reading of 500 ppm or greater.

(c) In Phases I and II, each valve shall be monitored quarterly.

(d) In Phase III, the owner or operator shall monitor valves for leaks at the intervals specified below:

(1) At process units with 2 percent or greater leaking valves, calculated as a rolling average of 2 consecutive periods, the owner or operator shall either:

(i) Monitor each valve once per month; or

(ii) Within the first year after the onset of Phase III, implement a quality improvement program for valves that complies with the requirements of § XX.X3–l and monitor quarterly.

(2) At process units with less than 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in the following paragraphs (3) and (4) of this section.

(3) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(4) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(e)(1) Percent leaking valves at a process unit shall be determined by the following equation:

$$\%V_L = /(V_L/(V_T + V_C)) \times 100$$

where

$\%V_L$ = percent leaking valves

V_L = number of valves found leaking excluding nonrepairables as provided in paragraph (e) (3) (i) of this section

V_T = Total valves monitored

V_C = Optional credit for removed valves = 0.67 X net number (i.e., total removed - total added) of valves in VHAP service removed from process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $V_C = 0$.

(2) For use in determining monitoring frequency, as specified in paragraph (d) of this section, the percent leaking valves shall be calculated as a rolling average of 2 consecutive monitoring periods for monthly, quarterly, or semiannual monitoring programs; and as an average of any 3 out of 4 consecutive monitoring periods for annual monitoring programs.

(3) (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (e) (3) (ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking calculation in a previous period) up to a maximum of 1 percent of the total number of valves in VHAP service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in VHAP service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in VHAP service shall be included in the calculation of percent leaking valves.

(f)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the

leak is detected, except as provided in § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) When a leak is repaired, the valve shall be monitored at least once within the first three months after its repair.

(g) First attempts at repair include, but are not limited to, the following practices where practicable:

(1) Tightening of bonnet bolts;

(2) Replacement of bonnet bolts;

(3) Tightening of packing gland nuts; and

(4) Injection of lubricant into lubricated packing.

(h) Any valve that is designated, as described in § XX.X6(i)(l), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b) through (d) of this section; and

(2) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(i) Any valve that is designated, as described in § XX.X6(i) (2), as a difficult-to-monitor valve is exempt from the requirements of paragraphs (b) through (d) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface;

(2) The process unit within which the valve is located is an existing process unit; and

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(j) Any equipment located at a plant site with fewer than 250 valves in VHAP service is exempt from the requirements of paragraph (d) (1) of this section. Except as provided in paragraphs (h) and (i) of this section, the owner or operator shall monitor each valve in VHAP service for leaks once each quarter, or comply with paragraphs (d) (3) or (d) (4) of this section.

Section XX.X2–8 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

(a) Pumps, valves, connectors, and agitators in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and instrumentation systems shall be monitored within 5 calendar days by the method specified in § XX.X5(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method, except as provided in § XX.X2–1(c). If a potential leak in an instrumentation system is repaired as required in paragraphs (c) and (d) of this section, it is not necessary to monitor the system for leaks by the method specified in § XX.X5(b).

(b) If an instrument reading of 10,000 ppm or greater for agitators, 1,000 ppm or greater for pumps, or 500 ppm or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

(c) (1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(3) For instrumentation systems that are not monitored by the method specified in § XX.X5(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at 44 potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(d) First attempts at repair include, but are not limited to, the best practices described under § XX.X2–7(e).

SectionXX.X2–9 Standards: Product accumulator vessels.

Each product accumulator vessel shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel to a control device as described in § XX.X2–11, except as provided in § XX.X2–1(c).

Section XX.X2–10 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in VHAP service.

(c) Delay of repair for valves, connectors, and agitators is also allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § XX.X2–11.

(d) Delay of repair for pumps is also allowed if:

(1) Repair requires replacing a single mechanical seal system with

(i) A dual mechanical seal system that meets the requirements of § XX.X2–2(e),

(ii) a pump that meets the requirements of § XX.X2–2(f), or

(iii) a closed-vent system control device that meets the requirements of § XX.X2–2(g), and

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

Section XX.X2–11 Standards: Closed-vent systems and control devices.

(a) Owners or operators of closed-vent systems and control devices used to comply with provisions of this subpart shall comply with the provisions of this section, except as provided in § XX.X2–1(c).

(b) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the organic emissions vented to them with an efficiency of 95 percent or greater.

(c) Enclosed combustion devices shall be designed and operated to reduce the organic emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760°C.

(d) Flares used to comply with this subpart shall comply with the requirements of § 60.18.

(e) Owners or operators of control devices that are used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their design.

(f) (1) Closed-vent systems shall be designed for and operated with an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § XX.X5(c).

(2) Closed-vent systems shall be monitored to determine compliance with this section initially in accordance with § 61.05, annually, and at other times requested by the Administrator, except equipment components on closed vent systems meeting the descriptions in § XX.X2–7(h) and § XX.X2–13(f) through (h) shall meet the requirements of those sections.

(3) Leaks, as indicated by an instrument reading greater than 500 ppm above background and visual inspections, shall be repaired as soon as practicable, but not later than 15 calendar days after the leak is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(g) Whenever VHAP emissions are vented to a closed-vent system or control device used to comply with the provisions of this subpart, such system or control device shall be operating.

Section XX.X2–12 Standards: Agitators in gas/vapor service and in light liquid service.

(a)(1) Each agitator shall be monitored monthly to detect leaks by the methods specified in § XX.X5(b), except as provided in § XX.X2–1(c).

(2) Each agitator shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the agitator, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § XX.X2–10.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) Any agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § XX.X2–11 is exempt from the requirements of paragraphs (a)-(c).

Section XX.X2–13 Standards: Connectors in Gas/Vapor Service and in Light Liquid Service

(a) The owner or operator of an affected process unit shall monitor all connectors in gas/vapor and light liquid service, except as provided in §§ XX.X2–1 (c), and (f) through (h) of this section, at the intervals specified in paragraph (b) of this section.

(1) The connectors shall be monitored to detect leaks by the method specified in § XX.X5(b).

(2) If an instrument reading greater than or equal to 500 ppm is measured, a leak is detected.

(b) The owner or operator shall monitor for leaks at the intervals specified below.

(1) Within the first 12 months after the specified applicability dates described in § XX.X0(b) for each group of existing process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(2) Within the first 12 months after the beginning of startup or within 12 months after (date of promulgation), whichever is later, for new process units, the owner or operator shall monitor all connectors, except as provided in paragraphs (f) through (h) of this section.

(3) After conducting the initial survey required in paragraph (b)(1) of this section, the owner or operator shall perform all subsequent monitoring of connectors at the following frequencies, except as provided in paragraph (c)(2) of this section:

(i) Once per calendar year, if the percent leaking connectors in the process unit was 0.5 percent or greater during the last required monitoring period.

(ii) Once every two calendar years, if the percent leaking connectors was less than 0.5 percent during the last required monitoring period. An owner or operator may comply with this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The percent leaking connectors will be calculated for the total of all monitoring performed during the two-year period.

(iii) If the owner or operator of a process unit in a biennial leak detection and repair program calculates less than 0.5 percent leaking connectors from the 2-year monitoring period, the owner or operator may monitor the connectors 1 time every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 20 percent of the connectors each year until all connectors have been monitored within 4 years.

(iv) If a process unit complying with the requirements of paragraph (b) of this section using a 4-year monitoring interval program has greater than or equal to 0.5 percent but less than 1 percent leaking connectors, the owner or operator shall increase the monitoring frequency to 1 time every 2 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first year and the remainder of the connectors in the second year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(v) If a process unit complying with requirements of paragraph (b) using a 4-year monitoring interval program has 1 percent or greater leaking connectors, the owner or operator shall increase the monitoring frequency to 1 time per year. The owner or operator may again elect to use the provisions of paragraph (b)(3)(iii) of this section when the percent leaking connectors decreases to less than 0.5 percent.

(4) After (Insert date of publication of proposed rule in the **Federal Register**), if an owner or operator eliminates a connector subject to monitoring under paragraph (b) of this section either by welding it completely around the circumference of the interface or by physically removing the connector and welding the pipe together, the owner or operator shall check the integrity of the weld by monitoring it according to the procedures in § XX.X5(b) or by testing using X-ray, acoustic monitoring, hydrotesting, or other applicable method. Welds created after (Insert date of publication of proposed rule in the **Federal Register**) but before (Insert date of publication of final rule in the **Federal Register**) shall be monitored or tested by *(Insert 3 months after date of publication of final rule in the* **Federal Register**]; welds created after (Insert date of publication of final rule in the **Federal Register**) shall be monitored or tested within 3 months after being welded. If an inadequate weld is found or the connector is not welded completely around the circumference, the connector is not considered a welded connector as described in § XX.XI, and is therefore not exempt from the provisions of this subpart. Connectors welded on or after (Insert date of publication of proposed rule in the **Federal Register**) can count as connectors removed from the process and be eligible for removed connector credits as described in paragraph (i) of this section.

(c)(1)(i) Except as provided in paragraph (c)(1)(ii) of this section, each connector that has been opened or has otherwise had the seal broken shall be

monitored for leaks within the first 3 months after being returned to VHAP service, including those determined to be nonrepairable prior to process unit shutdown. If the followup monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section, unless it is determined to be nonrepairable, in which case it is counted as a nonrepairable for the purposes of paragraph (i)(2) of this section.

(ii) As an alternative to the requirements in paragraph (c)(1)(i) of this section, an owner or operator may choose to calculate percent leaking connectors for the monitoring periods described in paragraph (b) of this section, by setting the nonrepairable component, C_N, in the equation in paragraph (i)(2) of this section to zero for all monitoring periods.

(iii) An owner or operator may switch alternatives described in paragraph (c)(1) (i) and (ii) of this section at the end of the current monitoring period he is in, provided that he notify the Administrator as required in § XX.X7(b)(7) and begin the new alternative in annual monitoring. The initial monitoring in the new alternative shall be completed no later than I2 months after notification of the Administrator of the switch.

(2) As an alternative to the requirements of paragraph (b)(3) of this section, each screwed connector 2 inches or less installed in a process unit before (Insert date of publication of proposed rule in **Federal Register**) may:

(i) Comply with the requirements of § XX.X2–8, and

(ii) Be monitored for leaks within the first three months after being returned to VHAP service after having been opened or otherwise had the seal broken. If the followup monitoring detects a leak, it shall be repaired according to the provisions of paragraph (d) of this section.

(d) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (g) of this section and in § XX.X2–10. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(e) If a leak is detected, the connector shall be monitored for leaks within the first three months after its repair.

(f) Any connector that is designated, as described in § XX.X6(i)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with paragraphs (a) through (e) of this section; and

(2) The owner or operator has a written plan that requires monitoring of the connector as frequent as practicable during safe to monitor periods.

(g) Any connector that is designated, as described in § XX.X6(i)(3), as an unsafe-to-repair connector is exempt from the requirements of paragraphs (a), (d), and (e) of this section if:

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (d) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit shutdown.

(h)(1) Any connector that is designated, as described in § XX.X6(i)(4) as inaccessible, or is glass or glass-lined, is exempt from the monitoring requirements of paragraph (a) of this section and from the recordkeeping and reporting requirements of § XX.X6 and § XX.X7. An inaccessible connector is one that is

(i) Buried,

(ii) Insulated in a manner that prevents access to the connector by a monitor probe,

(iii) Obstructed by equipment or piping that prevents access to the connector by a monitor probe, or

(iv) Unable to be reached from a 25-foot portable scaffold on the ground, and is greater than 2 meters above a support surface.

(2) If any inaccessible or glass or glass-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § XX.X2–10 and paragraph (g) of this section.

(3) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(i) For use in determining the monitoring frequency, as specified in paragraph (b) of this section, the percent leaking connectors shall be calculated as follows:

(1) For the first monitoring period, use the following equation:

$$\%\ C_t = C_L = C_L/(C_t + C_c) \times 100$$

Where:

$\%\ C_L$ = percent leaking connectors

C_L = number of connectors measured at 500 ppm or greater, by the method specified in § XX.X5(b)

C_t = total number of monitored connectors in the process unit

C_C = Optional credit for removed connectors = 0.67 × net (i.e., total removed—total added) number of connectors in VHAP service removed from the process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $C_C = 0$.

(2) For subsequent monitoring periods, use the following equation:

$$\%\ C_L = [(C_L - C_{AN})/(C_t + CC)] \times 100$$

Where:

$\%\ C_L$ = percent leaking connectors

C_L = number of connectors, including nonrepairables, measured at 500 ppm or greater, by the method specified in § XX.X5(b)

C_{AN} = number of allowable nonrepairable connectors, as determined by monitoring required in paragraphs (b)(3) and (c) of this section, not to exceed 2 percent of the total connector population, C_t

C_t = total number of monitored connectors, including nonrepairables, in the process unit.

C_C = Optional credit for removed connectors = 0.67 × net number (i.e., total removed—total added) of connectors in VHAP service removed from the process unit after the applicability date set forth in § XX.X0(b) for existing process units, and after the date of startup for new process units. If credits are not taken, then $C_C = 0$.

§ XX.X3–1 Quality Improvement Program (QIP) for Valves.

(a) In Phase III, to comply with the requirements in § XX.X2–7(d)(1)(ii), an owner or operator may elect to comply with one of the alternative quality improvement programs specified in paragraphs (d) and (e) of this section. The decision to use one of these alternative provisions to comply with the requirements of § XX.X2–7(d)(l)(ii) must be made during the first year of Phase III for existing process units and for new process units.

(b) An owner or operator of a process unit subject to the requirements of paragraphs (d) or (e) of this section shall comply with those requirements until the process unit has fewer than 2 percent leaking valves, calculated as a rolling average of 2 consecutive quarters as specified in § XX.X2–7(e).

(c) After the process unit has fewer than 2 percent leaking valves, the owner or operator may elect to comply with the requirements in § XX.X2–7, to continue to comply with the requirements in paragraph (e) (or (d), if appropriate) of this section, or both. If the owner or operator elects to continue the QIP, the owner or operator is exempt from the requirements for performance trials as specified in paragraph (e)(6) of this section, or further progress as specified

in paragraph (d)(4) of this section, as long as the process unit has fewer than 2 percent leaking valves. If the owner or operator elects to comply with both paragraph (e) of this section and § XX.X2–7, he may also take advantage of the lower monitoring frequencies associated with lower leak rates in § XX.X2–7. If the owner or operator elects not to continue QIP, the QIP is no longer an option if the process unit again exceeds 2 percent leaking valves, and in such case, monthly monitoring will be required.

(d) The following requirements shall be met if an owner or operator elects to use a QIP to demonstrate further progress:

(1) The owner or operator shall continue to comply with the requirements in § XX.X2–7 except each valve shall be monitored quarterly.

(2) The owner or operator shall collect the following data, and maintain records as required in § XX.X6(m), for each valve in each process unit subject to the QIP:

(i) The maximum instrument reading observed in each monitoring observation before repair, the response factor for the stream if appropriate, the instrument model number, and date of the observation.

(ii) Whether the valve is in gas or light liquid service.

(iii) If a leak is detected, the repair methods used and the instrument readings after repair.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the QIP.

(4) The owner or operator must demonstrate progress in reducing the percent leaking valves each quarter the process unit is subject to the requirements of paragraph (d) of this section, except as provided in paragraph (d)(4)(ii) of this section.

(i) Demonstration of progress shall mean that for each quarter there is at least a 10 percent reduction in the percent leaking valves from the percent leaking valves determined for the preceding monitoring period. The percent leaking valves shall be calculated as a rolling average of 2 consecutive quarters of monitoring data. The percent reduction shall be calculated using the rolling average percent leaking valves, according to the following:

$$\%LV_R = (\%LV_{AVG1} - \%LV_{AVG2})/\%LV_{AVG1} \times 100$$

where:

$\%LV_R$ = Percent leaking valve reduction

$\%LV_{AVG1} = (\%V_{Li} + \%V_{Li+1})/2$ and

$\%LV_{AVG2} = (\%V_{Li+1} + \%V_{Li+2})/2$

where:

$\%V_{Li}$, $\%V_{Li+1}$, $\%V_{Li+2}$ are percent leaking valves calculated for subsequent monitoring periods, i, i+1, i+2

(ii) An owner or operator who fails for 2 consecutive rolling averages to demonstrate at least a 10 percent reduction per quarter in percent leaking valves or that the overall average percent reduction based on 2 or more rolling averages is less than 10 percent per quarter shall either comply with the requirements in § XX.X2–7(d)(1) using monthly monitoring or shall comply using a QIP for technology review as specified in paragraph (e) of this section. If the owner or operator elects to comply with the requirements of paragraph (e) of this section, the schedule for performance trials and valve replacements remains as specified in paragraph (e) of this section.

(e) The following requirements shall be met if an owner or operator elects to use a QIP of technology review and improvement:

(1) The owner or operator shall comply with the requirements in § XX.X2–7 except the requirement for monthly monitoring in paragraph § XX.X2–7(d)(1)(i) does not apply.

(2) The owner or operator shall collect the data specified below, and maintain records as required in § XX.X6(m), for each valve in each process unit subject to the QIP. The data may be collected and the records may be maintained on a process unit or group of process units basis.

(i) The data shall include the following:

(A) Valve type (e.g., ball, gate, check); valve manufacturer; valve design (e.g., external stem or actuating mechanism, flanged body); materials of construction; packing material; and year installed.

(B) Service characteristics of the stream such as operating pressure, temperature, line diameter, and corrosivity.

(C) Whether the valve is in gas or light liquid service.

(D) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if adjusted, instrument model number, and date of the observation.

(E) If a leak is detected, the repair methods used and the instrument readings after repair.

(F) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the valves as long as the process unit remains in the QIP.

(4) The owner or operator shall inspect all valves removed from the process unit due to leaks. The inspection shall determine which parts of the valve have failed and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (e)(2) of this section to determine the services, operating or maintenance practices, and valve designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to identify any superior performing valve technologies that are applicable to the service(s), operating conditions, or valve designs associated with poorer than average emission performance. A superior performing valve technology is one for which a group of such valves has a leak frequency of less than 2 percent for specific applications in such a process unit. A candidate superior performing valve technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 2 percent leaking valves in the process unit.

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of valves removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify valve designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the valve design and operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of Phase III. The first analysis shall be performed using a minimum of 2 quarters of data. An analysis of the data shall be done each year the process unit is in the QIP.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify superior performing valve designs or technologies that can be applied to the operating conditions and services identified as having poorer than average performance, except as provided in paragraph (e)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit the valve designs or technologies that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of valves or operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 2 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing valve technologies is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § XX.X6(m)(6)(ii).

(ii) The number of valves in the trial evaluation program shall be the lesser of 1 percent or 20 valves for programs involving single process units and the lesser of 1 percent or 50 valves for programs involving groups of process units.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing valve designs or technologies to be evaluated, the stages for evaluating the identified candidate valve designs or technologies, including the estimated time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated.

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial valves.

(iv) The performance trials shall initially be conducted for, at least, a 6-month period beginning not later than 18 months after the start of Phase III. Not later than 24 months after the start of Phase III, the owner or operator shall have identified valve designs or technologies that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (e)(6)(vi) of this section. The compilation of candidate and demonstrated superior emission performance valve designs or technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 total employees shall be exempt from trial evaluations of valves. Plant sites exempt from the trial evaluations of valves shall begin the valve replacement program at the start of the fourth year of Phase III.

(vi) An owner or operator who has conducted performance trials on all candidate superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible candidate superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgement that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator who elects to use a QIP for technology review and improvement shall prepare and implement a valve quality assurance program that details purchasing specifications and maintenance procedures for all valves in the process unit. The quality assurance program may establish any number of categories, or classes, of valves as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (e)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (e)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be reviewed and, as appropriate, updated each year as long as the process unit has 2 percent or more leaking valves.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of valves. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the valve;

(C) Include a written procedure for bench testing of valves that specifies performance criteria for acceptance of valves and specifies criteria for the precision and accuracy of the test apparatus. All valves repaired off-line after preparation of the quality assurance plan shall be bench tested for leaks. This testing may be conducted by the owner or operator of the process unit, by the vendor, or by a designated representative. The owner or operator shall install only those valves that have been documented through bench testing to be nonleaking.

(D) Require that all valves repaired on-line be tested using the method specified in § XX.X5(b) for leaks for 2 successive months, after repair.

(E) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the process unit or by a designated representative.

(F) Detail off-line valve maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished valves will meet the design specifications for the valve type and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees; and no later than the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees.

(8) Beginning at the start of the third year of Phase III for plant sites with 400 or more valves or owned by a corporation with 100 or more employees and at the start of the fourth year of Phase III for plant sites with less than 400 valves and owned by a corporation with less than 100 employees, each valve that is replaced for any reason shall be replaced with a new or modified valve that complies with the quality assurance standards for the valve category and that is identified as

superior emission performance technology. Superior emission performance technology means valves or valve technologies identified with emission performance that, combined with appropriate process, operating, and maintenance practices, will result in less than 2 percent leaking valves for specific applications in a large population, except as provided in paragraph (e)(8)(ii) of this section.

(i) The valves shall be maintained as specified in the quality assurance program.

(ii) If a superior emission performance technology cannot be identified, then valve replacement shall be with one of (if several) the lowest emission performance technologies that has been identified for the specific application.

Section XX.X3–2 Quality Improvement Program for Pumps

(a) In Phase III, if, on a 6-month rolling average, the greater of either 10 percent of the pumps in a process unit (or plant site) or 3 pumps in a process unit (or plant site) leak, the owner or operator shall comply with the requirements of this section as specified below:

(1) Pumps that are in food/medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or 3 pumps, as calculated as a 6-month-rolling average, in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § XX.X2–2.

(c) If in a subsequent monitoring period the process unit (or plant site) has greater than 10 percent of the pumps leaking or 3 pumps leaking (calculated as a 6-month-rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) The quality improvement program shall include the following:

(1) The owner or operator shall comply with the requirements in § XX.X2–2.

(2) The owner or operator shall collect the following data, and maintain records as required in § XX.X6(m), for each pump in each process unit (or plant site) subject to the QIP. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (e.g., piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (e.g., external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) The owner or operator shall inspect all pumps or pump seals which exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an interior intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using a minimum of 6 months of data. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance, except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10

percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in § XX.X6(m)(6)(ii).

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or 2 pumps for programs involving single process units and the lesser of 1 percent or 5 pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be 1.

(iii) The trial evaluation program shall specify and include documentation of:

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated.

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted, at least, for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience is obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgement that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section, and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has 3 leaking pumps.

(i) The quality assurance program shall:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative.

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate such that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees; and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace, as described in paragraphs (i) and (ii) of this paragraph, the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance which, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § XX.X2–2 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next

planned process unit shutdown, provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

Section XX.X4–1 Alternative Means of Emission Limitation: General

(a) Permission to use an alternative means of emission limitation under section 112(e)(3) of the Clean Air Act shall be governed by the following procedures:

(b) Where the standard is an equipment, design, or operational requirement:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(2) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(3) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Where the standard is a work practice:

(1) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(2) For each source for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(3) For each source for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(4) Each owner or operator applying for permission shall commit, in writing, for each source to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(5) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (c)(4) of this section.

(6) The Administrator may condition the permission on requirements that may be necessary to assure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(d) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(e)(1) Manufacturers of equipment used to control equipment leaks of a VHAP may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the VHAP achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (b), (c), and (d) of this section.

Section XX.X4–2 Alternative Means of Emission Limitation: Batch Processes

(a) As an alternative to complying with the requirements of §§ XX.X2–2 through XX.X2–10, XX.X2–12, XX.X2–13, XX.X3–1, and § XX.X3–2, an owner or operator of a batch process that operates in VHAP service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § XX.X4–1. The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks.

(b) The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart. An owner or operator who complies with the provisions of this paragraph is exempt from the monitoring provisions of § XX.X2–2, § XX.X2–7, § XX.X2–8, XX.X2–10, § XX.X2–12, § XX.X2–13, § XX.X3–1, and § XX.X3–2 of this subpart.

(1) Each time equipment is reconfigured for production of a product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before VHAP is first fed to the equipment and the equipment is placed in VHAP service. When the seal is broken between two items of equipment or when equipment is changed in a section of the batch product-process equipment train, pressure testing is required only for the new or disturbed equipment. Each batch product process that operates in VHAP service during a calendar year shall be pressure tested at least once during that calendar year.

(2) The batch product process equipment shall be tested with a gas using the procedures specified in § XX.X5(f) or with a liquid using the procedures specified in § XX.X5(g).

(3)(i) For pressure tests using a gas, a leak is detected if the rate of change in pressure is greater than 1 psig in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4)(i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before VHAP is fed to the equipment.

(ii) If a batch product-process fails the retest or the second of two consecutive pressure tests, it shall be repaired as soon as practicable, but not later than 30 calendar days after the equipment is placed in VHAP service, provided the conditions specified in paragraph (d) of this section are met.

(c) The following requirements shall be met if an owner or operator elects to monitor the equipment to detect leaks by the method specified in § XX.X5(b) to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ XX.X2–2 to XX.X2–9, §§ XX.X2–11 to XX.X2–13, XX.X3–1 and § XX.X3–2.

(2) The equipment shall be monitored for leaks by the method specified in § XX.X5(b) when the equipment is in VHAP service, in use with an acceptable surrogate volatile organic compound which is not a VHAP or is in use with any other detectable gas or vapor.

(3) The equipment shall be monitored for leaks as specified below:

(i) Each time the equipment is reconfigured for the production of a product, the reconfigured equipment shall be monitored for leaks within 30 days of being returned to VHAP service. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment.

(ii) Connectors shall be monitored in accordance with the requirements in § XX.X2–13.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in the table below by the proportion of the year the batch product-process equipment train is operating with processes that use VHAP and the monitoring frequency for continuous processes.

Batch process time in use	Equivalent continuous process monitoring frequency		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually.	Annually.
50 to <75%	Bimonthly.	Three times.	Semiannually.
75 to 100%	Monthly	Quarterly	Semiannually.

(iv) Valves may be monitored once per year and pumps and agitators may be monitored once per quarter if the time each individual item of equipment is in VHAP service is less than 2190 hours in a calendar year.

(v) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section.

(d) Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

Section XX.X4–3 Alternative Means of Emission Limitation: Enclosed-Vented Process Units

Process units enclosed in such a manner that all emissions from equipment leaks are vented through a closed-vent system to a control device meeting the requirements of § XX.X2–11 are exempt from the monitoring requirements of §§ XX.X2–2, XX.X2–7, XX.X2–8, XX.X2–12, and XX.X2–13. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

Section XX.X5 Test Methods and Procedures

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Monitoring, as required in § XX.X2, § XX.X3, and § XX.X4, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21, 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21, 40 CFR part 60.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 0.2 ppm of hydrocarbon in air); and

(ii)(A) For Phase I, a mixture of methane in air at a concentration of approximately, but less than, 10,000 ppm.

(B) For Phase II, a mixture of methane and air at a concentration of approximately, but less than, 10,000 ppm for agitators, 5,000 ppm for pumps, and 500 ppm for all other equipment, except as provided in subparagraph (b)(4)(iii) of this section.

(C) For Phase III, a mixture of methane and air at a concentration of approximately, but less than, 10,000 ppm methane for agitators, 2,000 ppm for pumps in food/medical service, 5,000 ppm for pumps in polymerizing monomer service, 1,000 ppm for all other pumps, and 500 ppm for all other equipment, except as provided in subparagraph (b)(4)(iii) of this section.

(iii) The instrument may be calibrated at a higher methane concentration up to 2,000 ppm than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. The instrument may not be calibrated at a lower methane concentration than the leak definition concentration for a specific piece of equipment.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21, 40 CFR part 60.

(6) The instrument response factors shall be considered in the following manner:

(i) The response factors used shall be the instrument response factor determined for the individual VHAP at 500 ppm. The response factors may be obtained from the available literature, the instrument manufacturer, or determined for the specific instrument and VHAP.

(ii) Chemical composition of individual process streams may be determined by sampling, engineering calculations, or process knowledge. A separate determination for each stream is not necessary if all or portions of the process unit can be shown to exhibit similar composition. The basis for all process stream composition determinations shall be documented as required in § XX.X6(b)(11).

(iii) If the response factors at 500 ppm for the VHAP's that account for 90 percent or more by weight of the process stream are all less than 3, the instrument readings may be used without adjustment for response factors.

(iv) If any of the response factors at 500 ppm for the VHAP's that account for 90 percent or more by weight of the process stream is 3 or greater, then a weighted average response factor for the VHAP in the process stream shall be calculated using the procedures specified in paragraph (b)(6)(v) of this section. If the process stream weighted average response factor is less than 3, the instrument readings may be used without adjustment for response factors. If the process stream weighted average response factor is greater than 3, the instrument readings shall be adjusted for response factors as indicated below:

(A) Adjust the instrument readings by multiplying by the response factor,

(B) Select another instrument, determine or obtain instrument response factors for the VHAP in question, and evaluate the need for adjustment as specified in paragraphs (b)(6)(iii) and (b)(6)(iv) of this section, or

(C) Calibrate the instrument with a different reference compound or mixture (i.e., one of the VHAP, a VOC other than methane, or the process stream mixture) so that the instrument has a response factor for 90 percent of the VHAP or for the process stream less than 3.

(v) The process stream average response factor shall be calculated as follows:

$$RF_{avg} = \frac{\sum_{i=1}^{n} (\%C_i)\ (RF_{Ci})}{\sum_{i=1}^{n} (\%C_i)}$$

Where:

RF_{avg} = Weighted average response factor.

$\%C_i$ = Molar fraction, or volume percent if in gaseous form, of organic compound i in the process stream.

RF_{Ci} = Response factor of the instrument for organic compound i at 500 ppm.

(c) When equipment is tested for compliance as required in § XX.X2–3(i), § XX.X2–4, and § XX.X2–11(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21, 40 CFR part 60.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21, 40 CFR part 60.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d)(1) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in VHAP service is presumed to be in VHAP service unless an owner or operator demonstrates that the piece of equipment is not in VHAP service. For a piece of equipment to be considered not in VHAP service, it must be determined that the percent VHAP content can be reasonably expected not to exceed 5 percent by weight during the calendar year. For purposes of determining the percent VHAP content of the process fluid that is contained in or contacts equipment, Method 18 shall be used.

(2)(i) An owner or operator may use good engineering judgment rather than the procedures in paragraph (d)(1) of this section to determine that the percent VHAP content does not exceed 5 percent by weight. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in VHAP service, however, the procedures in paragraph (d)(1) of this section shall be used to resolve the disagreement.

(ii) Conversely, the owner or operator may determine that the VHAP content of the process fluid does not exceed 5 percent by weight by, for example, accounting for 98 percent of the content and showing that VHAP is less than 3 percent.

(3) If an owner or operator determines that a piece of equipment is in VHAP service, the determination can be revised after following the procedures in paragraph (d)(1) of this section, or by documenting that a change in the process or raw materials no longer causes the equipment to be in VHAP service.

(4) Samples used in determining the percent VHAP content shall be representative of the process fluid that is contained in or contacts the equipment.

(e) Reference methods used in determining compliance with flares are those required in § 60.18.

(f) The following procedures shall be used to pressure test batch product-process equipment using a gas (e.g., air or nitrogen) to demonstrate compliance with the requirements of § XX.X4–2(b)(3)(i).

(1) The batch product-process equipment train shall be pressurized with a gas to the operating pressure of the equipment. The equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting.

(2) Once the test pressure is obtained, the gas source shall be shut off.

(3) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop was exceeded. The pressure in the batch product-process equipment shall be measured after the gas source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta \frac{P}{t} = \frac{(P_f - P_i)}{(t_f - t_i)}$$

where:

$\Delta \frac{P}{t}$ = change in pressure, psig/hr

P_f = final pressure, psig
P_i = initial pressure, psig
$t_f - t_i$ = elapsed time, hours

(4) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) which has a precision of ±2.5 mm Hg in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device.

(g) The following procedures shall be used to pressure-test batch product-process equipment using a liquid to demonstrate compliance with the requirements of § XX.X4–2(b)(3)(ii).

(1) The batch product-process equipment train, or section of the train, shall be filled with the test liquid (e.g., water, alcohol). Once the equipment is filled, the liquid source shall be shut off.

(2) The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

(3) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

Section XX.X6 Recordkeeping Requirements

(a) An owner or operator of more than one process unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these process units in one recordkeeping system if the system identifies each record by process unit and the program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. All records and information required by this section shall be maintained in a manner that can be readily accessed at the plant site. This could include physically locating the records at the plant site or accessing the records from a central location by computer at the plant site.

(b) Except as provided in paragraphs (f) and (g) of this section, the following information pertaining to all equipment in each process unit subject to the requirements in § XX.X2–1 to § XX.X2–13 shall be recorded:

(1)(i) A list of identification numbers for equipment (except connectors exempt from monitoring and recordkeeping identified in § XX.X2–13 and instrumentation systems) subject to the requirements of this subpart and a site layout showing the relative location of the equipment in the process unit. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated.

(ii) A table listing the monitoring frequency and other provisions of this subpart that are being implemented for each item of equipment.

(iii) Physical tagging of the equipment to indicate that it is in VHAP service is not required. Equipment subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(2)(i) A list of identification numbers for compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 ppm above background, under the provisions of XX.X2–3(i).

(ii) The designation of this equipment as subject to the requirements of § XX.X2–3(i) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § XX.X2–4(a).

(4)(i) The dates and results of each compliance test required in § XX.X2–3(i) and XX.X2–4.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at each piece of equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(6) Instrumentation system identification. Individual components in the instrumentation system need not be identified.

(7) A list of identification numbers for equipment in VHAP service less than 300 hours per year within a process unit subject to the provisions of this subpart under § XX.X0.

(8)(i) Identification, either by list, location (area or grouping), or tagging of connectors disturbed since the last monitoring period required in § XX.2–13(b), as described in § XX.X2–l3(c).

(ii) The date and results of followup monitoring as required in § XX.X2–13(c). If identification of disturbed connectors is made by location, then all connectors within the designated location shall be monitored.

(9) A list of reconfigured equipment in batch product process units since the last monitoring period required in § XX.X4–2(c)(3)(ii)–(iv), as described in § XX.X4–2(c)(3)(i).

(10) A list of valves removed from and added to the process unit, as considered in § XX.X2–7(e)(1), and a list of connectors removed from and added to the process unit, as considered in § XX.X2–13(i)(1). This is not required unless the net credits for removed valves and connectors are expected to be used.

(11) Documentation of process stream composition as required in § XX.X5(b)(6)(ii).

(12) Identification of screwed connectors subject to the requirements of § XX.X2–l3(c)(2). Identification can be by area or grouping as long as the total number within each group or area is recorded.

(13) Identification of welded connectors monitored or tested as required in § XX.X2–13(b)(4), the date of the weld, and the date of monitoring or testing.

(c) When each leak is detected as specified in § XX.X2–2, § XX.X2–3, § XX.X2–7, § XX.X2–8, § XX.X2–11, § XX.X2–12, and § XX.X2–13, the following requirements apply:

(l) A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(2) The identification on a valve or connector may be removed after it has been monitored as specified in § XX.X2–7(f)(3) § XX.X2–13(e), and § XX.X3–l(e)(7)(i)(D), and no leak has been detected during the followup monitoring.

(3) The identification on equipment, except on a valve or connector, may be removed after it has been repaired.

(d) When each leak is detected as specified in § XX.X2–2, § XX.X2–3, § XX.X2–7, § XX.X2–8, § XX.X2–11, § XX.X2–12, and § XX.X2–l3, the following information shall be recorded and kept for 2 years:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date the leak was detected and the dates of each attempt to repair the leak.

(3) Repair methods applied in each attempt to repair the leak.

(4) Maximum instrument reading measured by the method specified in § XX.X5(b) after it is successfully repaired or determined to be nonrepairable.

(5) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. If delay of repair was cause by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked before depletion and the reason for depletion.

(6) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process unit shutdown.

(7) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(8) Dates of process unit shutdowns that occur while the equipment is unrepaired.

(9) The date of successful repair of the leak.

(e) The following information shall be recorded for each process unit subject to the requirements of § XX.X2–2 to § XX.X2–13:

(1) A schedule of monitoring for valves and for connectors.

(2) The number of leaking pumps, the total number of pumps, and the percent leaking pumps during each monitoring period.

(3) The number of leaking valves, the total number of valves, all net credits for removed valves (only if credits are taken), the number of nonrepairable valves, and the percent leaking valves during each monitoring period.

(4) The number of leaking connectors, the total number of monitored connectors, all net credits for removed connectors (only if credits are taken), the number of nonrepairable connectors, and the percent leaking connectors during each monitoring period. The number of leaking screwed connectors, the total number of monitored screwed connectors, and the percent leaking screwed connectors during each monitoring period.

(5) The dates and durations of

(i) startups and shutdowns of a process unit, and

(ii) any unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit that is not defined as a process unit shutdown. If the duration exceeds 24 hours, the calculations used in determining that emissions from clearing process material from the process unit or part of the process unit would exceed emissions from delay of repair of leaking components until the next scheduled shutdown shall be recorded. The calculation shall assume that the purged material is collected and destroyed or recovered in a control device complying with § XX.X2–11.

(f) The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this subpart is exempt from the requirements of paragraphs (b), (c), (d), (e), (i), and (m) of this section. Instead, the owner or operator shall maintain records of the following information:

(1) A list of identification numbers for each batch product process equipment train used to produce products during the calendar year and the area of the plant site where the equipment train is located.

(2) Records demonstrating the equipment is in use in a batch process during the calendar year. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit.

(3) Physical tagging of the equipment to identify that it is in VHAP service and subject to the provisions of this subpart is not required. Equipment in a batch product process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(4) The dates of each pressure test required in § XX.X4–2(b), the test pressure, and the pressure drop observed during the test.

(5) Records of any visible, audible, or olfactory evidence of fluid loss.

(g) When a batch product process equipment train does not pass 2

consecutive pressure tests, the following information shall be recorded in a log and kept for 2 years:

(1) The date of each pressure test and the date of each leak repair attempt.

(2) Repair methods applied in each attempt to repair the leak.

(3) The reason for the delay of repair.

(4) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment.

(5) The date of successful repair.

(h) The following information pertaining to the design requirements for closed-vent systems and control devices described in § XX.X2–11 shall be recorded:

(1) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(2) The dates and descriptions of any changes in the design specifications.

(3) A description of the parameter or parameters monitored, as required in § XX.X2–11(e), to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(4) Dates and durations when the closed-vent systems and control devices required in § XX.X2–2, § XX.X2–3, § XX.X2–4, § XX.X2–5, and § XX.X2–9 are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(5) Dates and durations during which the monitoring system or monitoring device is inoperative.

(6) Dates and durations of startups and shutdowns of the closed-vent systems and control devices required in § XX.X2–2, § XX.X2–3, § XX.X2–4, § XX.X2–5, and § XX.X2–9.

(i) The following information pertaining to all valves subject to the requirements of § XX.X2–7(h) and (i) and all connectors subject to the requirements of § XX.X2–13(f), (g), and (h) shall be recorded:

(1) A list of identification numbers for valves and connectors that are designated as unsafe to monitor, an explanation for each valve and connector stating why the valve or connector is unsafe to monitor, and the plan for monitoring each valve and connector.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(3) A list of identification numbers for connectors that are designated as unsafe to repair and an explanation for each connector stating why the connector is unsafe to repair.

(j) The following information shall be recorded:

(1) Design criterion required in § XX.X2–2(e)(5) and § XX.X2–3(e)(2) and an explanation of the design criterion; and

(2) Any changes to this criterion and the reasons for the changes.

(k) Information, data, and analysis used to determine that a piece of equipment or process unit is in heavy liquid service or is not in VHAP service shall be recorded. Such a determination shall include an analysis or demonstration that the feed or raw materials, products, by-products, co-products, or intermediates do not include sufficient chemicals listed in § XX.X8–1 to meet the criteria of "in VHAP service". Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(1) The date and duration of each process unit startup and shutdown shall be recorded.

(m) Each owner or operator of an affected process unit subject to the requirements of § XX.X3–1 and § XX.X3–2 shall maintain the following records for the period of the QIP for the affected process unit:

(1) For owners or operators who elect to use a reasonable further progress QIP, as specified in § XX.X3–1(d):

(i) All data required in § XX.X3–1(d)(2).

(ii) The percent 'leaking valves observed each quarter and the rolling average percent reduction observed in each quarter.

(iii) The beginning and ending dates while meeting the requirements of § XX.X3–1(d).

(2) For owners or operators who elect to use a technology review and improvement QIP, as specified in § XX.X3–1(e):

(i) All data required in § XX.X3–1(e)(2).

(ii) The percent leaking valves observed each quarter.

(iii) Documentation of all inspections conducted under the requirements of § XX.X3–1(e)(4) and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § XX.X3–1(e).

(3) For owners or operators subject to the requirements of the pump QIP as specified in § XX.X3–2:

(i) All data required in § XX.X3–2(d)(2).

(ii) The rolling average percent leaking pumps.

(iii) Documentation of all inspections conducted under the requirements of § XX.X3–2 (d) (4) and any recommendations for design or specification changes to reduce leak frequency.

(iv) The beginning and ending dates while meeting the requirements of § XX.X3–2(d).

(4) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(5) Records of all analyses required in § XX.X3–1(e) and § XX.X3–2(d). The records will include the following:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing valve or pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under § XX.X3–1(e) (6) (iii) and § XX.X3–2(d) (6) (iii).

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(6) All records documenting the quality assurance program for valves or pumps as specified in § XX.X3–1(e) (7) and § XX.X3–2(d)(7).

(7) Records indicating that all valves or pumps replaced or modified during the period of the QIP are in compliance with the quality assurance requirements in § XX.X3–1(e)(7) and § XX.X3–2(d)(7).

(8) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in § XX.X3–2(d)(8).

(9) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

(n) Owners and operators choosing to comply with the requirements of § XX.4–3 shall maintain the following records:

(1) Identification of the process unit(s) and the VHAPs they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

(o) The provisions of § 61.14(f) do not apply to process units subject to this subpart.

[Approved by the Office of Management and Budget under control number ———.]

Section XX.X7 Reporting Requirements

(a)(1) An owner or operator of a process unit subject to the provisions of this subpart shall submit a statement in writing so notifying the Administrator.

(2) In the case of an existing process unit or a new process unit which has an initial startup date preceding the effective date, the statement is to be submitted within 90 calendar days of the applicability dates specified in § XX.X0(b), unless a waiver of compliance is granted under § 61.11, along with the information required under § 61.10. If a waiver of compliance is granted, the statement is to be submitted on a date scheduled by the Administrator.

(3) In the case of new process units which did not have an initial startup date preceding the effective date, the statement shall be submitted with the application for approval of construction or reconstruction as described in § 61.07.

(4) The statement is to contain the following information for each process unit, except as provided in paragraph (b)(5) of this section:

(i) Process unit identification.

(ii) Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service,

(iii) Method of compliance with the standard (for example, "monthly leak detection and repair" or "equipped with dual mechanical seals").

(iv) Planned schedule for each phase of the requirements of this subpart.

(5) The statement is to contain the following information for each process unit subject to the requirements in § XX.X4–2(b):

(i) Batch product process equipment train identification, and

(ii) Planned schedule for pressure testing the batch product process equipment train.

(b) Except as provided in paragraph (c) of this section, a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section, that includes the following information, as applicable:

(1) Process unit identification, frequency of monitoring, and specific provisions of this subpart being implemented.

(2) For each monitoring period during the semiannual reporting period,

(i) The number of valves for which leaks were detected as described in § XX.X2–7(b), the percent leakers, and the total number of valves monitored;

(ii) The number of valves for which leaks were not repaired as required in § XX.X2–7(f), identifying the number of those that are determined nonrepairable.

(iii) The number of pumps for which leaks were detected as described in § XX.X2–2(b), the percent leakers, and the total number of pumps monitored.

(iv) The number of pumps for which leaks were not repaired as required in § XX.X2–2(c).

(v) The number of compressors for which leaks were detected as described in § XX.X2–3(f).

(vi) The number of compressors for which leaks were not repaired as required in § XX.X2–3(g).

(vii) The number of connectors for which leaks were detected as described in § XX.X2–13(a), the percent of connectors leaking, and the total number of connectors monitored.

(viii) The number of screwed connectors for which leaks were detected as described in § XX.X2–l3(a), the percent of screwed connectors leaking, and the total number of screwed connectors monitored.

(ix) The number of connectors for which leaks were not repaired as required in § XX.X2–13(d), identifying the number of those that are determined nonrepairable.

(x) The number of screwed connectors for which leaks were not repaired as required in § XX.X2–13(d).

(xi) The number of agitators for which leaks were detected as described in § XX.X2–12(b).

(xii) The number of agitators for which leaks were not repaired as required in § XX.X2–12(c).

(xiii) The facts that explain any delay of repairs and, where appropriate, why a process unit shutdown was technically infeasible.

(3) Dates and durations of process unit, control device, or monitoring device startups or shutdowns which occurred within the semiannual reporting period.

(4) Revisions to items reported according to paragraph (a) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

Note: Compliance with the requirements of § 61.10(c) is not required for revisions documented under this paragraph.

(5) The results of all performance tests to determine compliance with § XX.X2–3(i), § XX.X2–4(a), and § XX.X2–1l(f) conducted within the semiannual reporting period.

(6) The initiation of a monthly monitoring program under § XX.X2–7(d)(1)(i), or a QIP under either § XX.X3–1 or § XX.X3–2, whichever is applicable.

(7) Notification of the Administrator of a change in connector monitoring alternatives as described in § XX.X2–13(c)(1).

(c) For owners or operators electing to meet the requirements of § XX.X4–2(b), a report shall be submitted to the Administrator semiannually starting 6 months after the initial report required in paragraph (a) of this section. The semiannual report shall include the following information:

(1) Batch product process equipment train identification,

(2) The number of pressure tests conducted,

(3) The number of pressure tests where the equipment train failed the pressure test,

(4) The facts that explain any delay of repairs, and

(5) The results of all performance tests to determine compliance with § XX.X2–11(f).

(d) An application for approval of construction or reconstruction, § 61.05(a) and § 61.07, will not be required if

(1) The new process unit complies with the applicable standard in § XX.X2 or § XX.X4–2; and

(2) In the next semiannual report required by paragraph (b) of this section, the information in paragraph (a)(4) of this section is reported.

(e) An owner or operator of a process unit required to comply with § XX.X2–7(d)(1) shall notify the Administrator within 30 calendar days of initiating the monthly monitoring program under § XX.X2–7(d)(l)(i) or a QIP under § XX.X3–l.

(f) An owner or operator of a process unit required to comply with § XX.X2–2(d)(2) shall notify the Administrator within 30 calendar days of initiating a QIP under § XX.X3–2.

(g) If acceptable to both the Administrator and the owner or operator of the process unit, the reports may be submitted on electronic media.

[Approved by the Office of Management and Budget under control number ———.]

Section XX.X8–I List of Volatile Hazardous Air Pollutants.

Chemical name	CAS No.
Acetaldehyde	75070
Acetamide	60355
Acetonitrile	75058
Acetophenone	98862
2 -Acetylaminofluorine	53963

Chemical name	CAS No.
Acrolein	107028
Acrylamide	79061
Acrylic acid	79107
Acrylonitrile	107131
Allyl chloride	107051
4-Aminobiphenyl	92671
Aniline	62533
o-Anisidine	90040
Benzene	71432
Benzidine	92875
Benzotrichloride	98077
Benzyl chloride	100447
Biphenyl	92524
Bis(ethylhexyl)phthalate (DEHP)	117817
Bis(chloromethyl) ether	542881
Bromoform	75252
1,3-Butadiene	106990
Caprolactam	105602
Carbon disulfide	75150
Carbon tetrachloride	56235
Carbonyl sulfide	463581
Catechol	120809
Chloroacetic acid	79118
2-Chloroacetophenone	532274
Chlorobenzene	108907
Chloroform	67663
Chloromethyl methyl ether	107302
Chloroprene	126998
Cresols/Cresylic acid (isomers and mixture)	319773
Cresols/Cresylic acid (isomers and mixture)	95487
Cresols/Cresylic acid (isomers and mixture)	108394
Cresols/Cresylic acid (isomers and mixture)	106445
Cumene	98828
2,4-D, salts and esters	94757
DDE	3547044
Diazomethane	334883
Dibenzofurans	132649
1,2-Dibromo-3-chloropropane	96128
Dibutylphthalate	84742
1,4-Dichlorobenzene (p)	106467
3,3-Dichlorobenzidene	91941
Dichloroethyl ether (bis(2-chloroethyl)ether)	111444
1,3-Dichloropropene	542756
Diethanolamine	111422
N,N-Diethyl aniline (N,N-Dimethylaniline)	121697
Diethyl sulfate	64675
3,3'-Dimethoxybenzidine	119904
Dimethyl aminoazobenzene	60117
3,3'-Dimethyl benzidine	119937
Dimethyl carbamoyl chloride	79447
Dimethyl formamide	68122
1,1-Dimethyl hydrazine	57147
Dimethyl phthalate	131113
Dimethyl sulfate	77781
4,6-Dinitro-o-cresol, and salts	534521
2,4-Dinitrophenol	51285
2,4-Dinitrotoluene	121142
1,4-Dioxane (1,4-Diethyleneoxide)	123911
1,2-Diphenylhydrazine	122667
Epichlorohydrin (1-Chloro-2,3-epoxypropane)	106898
1,2 -Epoxybutane	106887
Ethyl acrylate	140885
Ethyl benzene	100414
Ethyl carbamate (Urethane)	51796
Ethyl chloride (Chloroethane)	75003
Ethylene dibromide (Dibromoethane)	106934
Ethylene dichloride (1,2-Dichloroethane)	107062
Ethylene glycol	107211
Ethylene oxide	75218
Ethylene thiourea	96457
Ethylidene dichloride (1,1-Dichloroethane)	75343
Formaldehyde	50000
Glycol ethersa	0
Hexachlorobenzene	118741
Hexachlorobutadiene	87683
Hexachloroethane	67721
Hexamethylene-1, 6-diisocyanate	822060
Hexamethylphosphoramide	680319
Hexane	110543
Hydrazine	302012
Hydroquinone	123319
Isophorone	78591
Maleic anhydride	108316
Methanol	67561
Methyl bromide (Bromomethane)	74839
Methyl chloride (Chloromethane)	74873
Methyl chloroform (1,1,1-Trichloroethane)	71556
Methyl ethyl ketone (2-Butanone)	78933
Methyl hydrazine	60344
Methyl iodide (Iodomethane)	74884
Methyl isobutyl ketone (Hexone)	108101
Methyl isocyanate	624839
Methyl methacrylate	80626
Methyl tert butyl ether	1634044
4,4-Methylene bis(2-chloroaniline)	101144
Methylene chloride (Dichloromethane)	75092
Methylene diphenyl diisocyanate (MDI)	101688
4,4'-Methylenedianiline	101779
Naphthalene	91203
Nitrobenzene	98953
4-Nitrobiphenyl	92933
4-Nitrophenol	100027
4-Nitropropane	79469
N-Nitroso-N-methylurea	684935
N-Nitrosodimethylamine	62759
N-Nitrosomorpholine	59892
Phenol	108952
p-Phenylenediamine	106503
Phosgene	75445
Phthalic anhydride	85449
Polychlorinated biphenyls (Aroclors)	1336363
1,3-Propane sultone	1120714
beta-Propiolactone	57578
Propionaldehyde	123386
Propoxur (Baygon)	114261
Propylene dichloride (1,2-Dichloropropane)	78875
Propylene oxide	75569
1,2-Propylenimine (2-Methyl aziridine)	75558
Quinone	106514
Styrene	100425
Styrene oxide	96093
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746016
1,1,2,2-Tetrachloroethane	79345
Tetrachloroethylene (Perchloroethylene)	127184
Toluene	108883
2,4-Toluene diamine	95807
2,4-Toluene diisocyanate	584849
o-Toluidine	95534
1,2,4-Trichlorobenzene	120821
1,1,2-Trichloroethane	79005
Trichloroethylene	79016
2,4,5-Trichlorophenol	95954
2,4,6-Trichlorophenol	88062
Triethylamine	121448
Trifluralin	1582098
2,2,4-Trimethylpentane	540841
Vinyl acetate	108054
Vinyl bromide	593602
Vinyl chloride	75014
Vinylidene chloride (1,1-Dichloroethylene)	75354
Xylenes (isomers and mixture)	1330207
xylenes (isomers and mixture)	95476
xylenes (isomers and mixture)	108383
Xylenes (isomers and mixture)	106423

Section XX.X8-2 List of Hazardous Organic Chemical Production Processes.

The provisions of this subpart apply to production processes that make the following chemicals:

CAS No.	Chemical Name
GROUP I	
121733	1-Chloro-3-nitrobenzene
67641	Acetone
75058	Acetonitrile
98862	Acetophenone
79061	Acrylamide
107131	Acrylonitrile
111693	Adiponitrile
107186	Allyl alcohol
123308	Aminophenol (p-isomer)
62533	Aniline
103333	Azobenzene
71432	Benzene
98486	Benzenedisulfonic acid
98113	Benzenesulfonic acid
92875	Benzidine
119619	Benzophenone (POM)
92524	Biphenyl
542881	Bis(Chloromethyl)Ether
10861	Bromobenzene
110634	Butanediol (1,4-isomer)
96480	Butyrolacetone
56235	Carbon tetrachloride
532274	Chloroacetophone (2-isomer)
95512	Chloroaniline (o-isomer)
108907	Chlorobenzene
25497294	Chlorodifluoromethane
67663	Chloroform
88733	Chloronitrobenzene (o-isomer)
100005	Chloronitrobenzene (p-isomer)
80159	Cumene hydroperoxide
98828	Cumene (isopropyl benzene)
110827	Cyclohexane
108930	Cyclohexanol
108941	Cyclohexanone
110838	Cyclohexene
95761	Dichloroaniline (all isomers)
106467	Dichlorobenzene (1,4-isomer) (PDB)
541731	Dichlorobenzene (m-isomer)
95501	Dichlorobenzene (o-isomer)
1331471	Dichlorobenzidine (3,3-isomer)
107062	Dichloroethane (1,2-isomer) (EDC)
111444	Dichloroethyl ether (bis(2-chloroethyl)ether)
75718	Dichlorodifluoromethane
111422	Diethanolamine
111466	Diethylene glycol
112732	Diethylene Glycol Dibutyl Ether
112367	Diethylene glycol diethyl ether (glycol ether)
111966	Diethylene glycol dimethyl ether (glycol ether)
124174	Diethylene Glycol Monobutyl Ether Acetate
124177	Diethylene glycol monobutyl ether acetate (glycol ether)
112345	Diethylene glycol monobutyl ether (glycol ether)
112152	Diethylene glycol monoethyl ether acetate (glycol ether)
111900	Diethylene glycol monoethyl ether (glycol ether)

CAS No.	Chemical Name
111773	Diethylene glycol monomethyl ether (glycol ether)
77781	Dimethyl sulfate
108010	Dimethylaminoethanol (2-isomer)
25154545	Dinitrobenzenes
123911	Dioxane (1,4-Diethyleneoxide)
646060	Dioxilane
101815	Diphenyl Methane
101848	Diphenyl oxide (POM)
25265718	Dipropylene glycol
121013	Dodecylbenzene (n-isomer)
106898	Epichlorohydrin(1Chloro-2,3-epoxypropane)
141435	Ethanolamines (all isomers)
100414	Ethyl benzene
96491	Ethylene carbonate
106934	Ethylene dibromide (Dibromoethane) (EDB)
107211	Ethylene glycol
111557	Ethylene glycol diacetate
6299141	Ethylene Glycol Diethyl Ether
110714	Ethylene glycol dimethyl ether (glycol ether)
112072	Ethylene glycol monobutyl ether acetate (glycol ether)
111762	Ethylene glycol monobutyl ether (glycol ether)
11159	Ethylene glycol monoethyl ether acetate (glycol ether)
110805	Ethylene glycol monoethyl ether (glycol ether)
110496	Ethylene glycol monomethyl ether acetate (glycol ether)
109864	Ethylene glycol monomethyl ether (glycol ether)
122996	Ethylene glycol monophenyl ether (glycol ether)
2807309	Ethylene glycol monopropyl ether (glycol ether)
75218	Ethylene oxide
50000	Formaldehyde
110178	Fumaric acid
100970	Hexamethylenetetramine
123319	Hydroquinone
75310	Isopropylamine
123013	Linear alkylbenzene (linear dodecylbenzene)
110167	Maleic acid
108316	Maleic anhydride
123331	Maleic Hydrazide
6915157	Malic acid
121471	Metanilic acid
63683	Methionine
75092	Methylene Chloride (Dichloromethane)
101779	Methylene dianiline (4,4-isomer) (MDA)
98839	Methylstyrene (a-isomer)
110918	Morpholine
88744	Nitroaniline (o-isomer)
100016	Nitroaniline (p-isomer)
98953	Nitrobenzene
111660	Octene-1
9002817	Paraformaldehyde
115775	Pentaerythritol
127184	Perchloroethylene (tetrachloroethylene)
95545	Phenylenediamine (o-isomer)
106503	Phenylenediamine (p-isomer)
110850	Piperazine
57578	Propiolactone (b isomer)
79094	Propionic acid
57556	Propylene glycol
107982	Propylene Glycol Monomethyl Ether
75569	Propylene oxide
108463	Resorcinol
100425	Styrene (Vinyl Benzene)
110156	Succinic acid
110612	Succinonitrile
526830	Tartaric Acid
634902	Tetrachlorobenzene (1,2,3,5-isomer)
95943	Tetrachlorobenzene (1,2,4,5-isomer)
112607	Tetraethylene Glycol
109999	Tetrahydrofuran
108883	Toluene
102821	Trichlorobenzene (1,2,4-isomer)
79016	Trichloroethylene
75694	Trichlorofluoromethane
76131	Trichlorotrifluoroethane
95954	Trichlorophenol (2,4,5-isomer)
102716	Triethanolamine
112276	Triethylene glycol
112492	Triethylene glycol dimethyl ether (glycol ether)
112356	Triethylene Glycol Monomethyl Ether
77996	Trimethylopropane
75014	Vinyl chloride (Chloro Ethylene)
1330207	Xylenes (mixtures)
95476	Xylenes (o-isomer)
106423	Xylenes (p-isomer)

GROUP II

75070	Acetaldehyde
107891	Acetaldol
60355	Acetamide
103844	Acetanilide
64197	Acetic acid
108247	Acetic anhydride
75365	Acetyl chloride
111411	Aminoethylethanolamine
90040	Anisidine (o-isomer)
106990	Butadiene (1,3-isomer)
123864	Butyl acetate (n-isomer)
71363	Butyl alcohol (n-isomer)
109739	Butylamine (n-isomer)
107880	Butylene glycol (1,3-isomer)
123728	Butyraldehyde (n-isomer)
107926	Butyric acid
106310	Butyric anhydride
105602	Caprolactam
558134	Carbon tetrabromide
75730	Carbon Tetrafluoride
75876	Chloral
79118	Chloroacetic acid
108429	Chloroaniline (m-isomer)
106478	Chloroaniline (p-isomer)
108430	Chlorophenol (m-isomer)
106489	Chlorophenol (p-isomer)
126998	Chloroprene (2-Chloro-1,3-Butadiene)
75729	Chlorotrifluoromethane
4170300	Crotonaldehyde
3724650	Crotonic acid
372098	Cyanoacetic acid (CN compound)
111784	Cyclooctadiene
1552121	Cyclooctadiene (1,5-isomer)
760236	Dichloro-1-butene (3,4-isomer)
540590	Dichloroethylene (1,4-isomer)
542756	Dichloropropene (1,3-isomer)
64675	Diethyl sulfate
119937	Dimethyl Benzidine (3,3-isomer)
68122	Dimethyl formamide (NN-isomer) (DMF)
57147	Dimethyl hydrazine (1,1-isomer)
120616	Dimethyl terephthalate
141786	Ethyl acetate
141979	Ethyl acetoacetate
140885	Ethyl acrylate
105395	Ethyl Chloroacetate
41892711	Ethyl sodium oxalacetate
151564	Ethylene Imine (Aziridine)
107153	Ethylenediamine
104767	Ethylhexanol (2-isomer)
103117	Ethylhexyl Acrylate (2-isomer)
75127	Formamide
64186	Formic acid
56815	Glycerol
26545737	Glycerol dichlorohydrin
25791962	Glycerol triether
56406	Glycine
107222	Glyoxal
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
67721	Hexachloroethane
592450	Hexadiene (1,4-isomer)
124094	Hexamethylenediamine
107313	Methyl formate
98851	Methyl Phenol Carbinol
99092	m-Nitroaniline
79469	Nitropropane
123637	Paraldehyde
79210	Peracetic Acid
108996	Picoline (b-isomer)
110894	Piperadine
110861	Pyridine
111206	Sebacic Acid
127093	Sodium acetate
3926623	Sodium chloroacetate
110441	Sorbic acid
126330	Sulfolane
100210	Terephthalic acid
79345	Tetrachloroethane (1,1,2,2-isomer)
85438	Tetrahydrophthalic anhydride
110601	Tetramethylenediamine
95807	Toluene 2,4 diamine
584849	Toluene 2,4 diisocyanate
26471625	Toluene diisocyanates (mixture)
95534	Toluidine (o-isomer)
71556	Trichloroethane (1,1,1-isomer)
79005	Trichloroethane (1,1,2-isomer) (Vinyl Trichloride)
108054	Vinyl acetate
100403	Vinylcyclohexene (4-isomer)
75354	Vinylidene chloride (1,1-Dichloroethylene)

GROUP III

102012	Acetoacetanilide
124049	Adipic acid
1321115	Aminobenzoic acid
142041	Aniline hydrochloride

CAS No.	Chemical Name
100663	Anisole
118923	Anthranilic acid
84651	Anthraquinone (POM)
100527	Benzaldehyde
55210	Benzamide
134816	Benzil (POM)
76937	Benzilic acid (POM)
65850	Benzoic acid
119539	Benzoin (POM)
100470	Benzonitrile
98077	Benzotrichloride
96884	Benzoyl chloride
140114	Benzyl Acetate
100516	Benzyl alcohol
120514	Benzyl benzoate (POM)
100447	Benzyl chloride
96873	Benzyl dichloride
100469	Benzylamine
80057	Bisphenol A (POM)
85687	Butylbenzyl Phthalate
35913098	Chlorobenzaldehyde
118912	Chlorobenzoic acid (all isomers)
2136814	Chlorobenzotrichloride (all isomers)
1321035	Chlorobenzoyl chloride
95578	Chlorophenol (o-isomer)
108418	Chlorotoluene (m-isomer)
95498	Chlorotoluene (o-isomer)
106434	Chlorotoluene (p-isomer)
108394	Cresol (m-isomer)
1319773	Cresols Cresylic acid (mixed)
95487	Cresols (o-isomer)
106445	Cresols (p-isomer)
108918	Cyclohexylamine
1087214	Diallyl Isophthalate
27576041	Diaminobenzoic acid
120832	Dichlorophenol (2,4-isomer)
101837	Dicyclohexylamine (Cicloheхylamine)
91667	Diethyaniline (NN-isomer)
84662	Diethyl Phthalate
26761400	Diisodecyl phthalate
131113	Dimethyl Phthalate
121697	Dimethylaniline-N,N (N,N Diethylaniline)
99343	Dinitrobenzoic acid (3,5-isomer)
51285	Dinitrophenol (2,4-isomer)
121142	Dinitrotoluene (2,4-isomer) (DNT)
97392	Di-o-tolyguanidine
102089	Diphenyl thiourea (POM)
122394	Diphenylamine (POM)
27193868	Dodecylphenol
103695	Ethylaniline (N-isomer)
578541	Ethylaniline (o-isomer)
99967	Hydroxybenzoic acid (p-isomer)
121915	Isophthalic acid
25168063	Isopropylphenol
108430	m-Chlorophenol
100618	Methylaniline (n-isomer)
108872	Methylcyclohexane
1331222	Methylcyclohexanone
101688	Methylene diphenyl diisocyanate (MDI)
108383	M-Xylene
99092	Nitroaniline (m-isomer)
91236	Nitroanisole (o-isomer)
100174	Nitroanisole (p-isomer)
27178832	Nitrobenzoic acid (o-,m-, &p-isomers)
100027	Nitrophenol (4-isomer)
88755	Nitrophenol (o-isomer) (2-Nitrophenol)
1321126	Nitrotoluene
88722	Nitrotoluene (2-isomer)
99081	Nitrotoluene (3-isomer)
99990	Nitrotoluene (4-isomer)
27193288	Octylphenol
87865	Pentachlorophenol
94702	Phenetidine (o-isomer)
156434	Phenetidine (p-isomer)
108952	Phenol
77098	Phenolphthalein
98679	Phenolsulfonic acids (all isomers)
91407	Phenyl anthranilic acid
108736	Phloroglucinol
88993	Phthalic Acid
85449	Phthalic anhydride
85416	Phthalimide
91156	Phthalonitrile
98511	p-tert-Butyl Toluene
106514	Quinone
69727	Salicylic acid
532321	Sodium benzoate
139026	Sodium phenate
588590	Stilbene
121573	Sulfanilic acid
632791	Tetrabromophthalic anhydride
117088	Tetrachlorophthalic anhydride
1333079	Toluenesulfonamide
104154	Toluenesulfonic acids (all isomers)
98599	Toluenesulfonyl chloride
634935	Trichloroaniline (2,4,6-isomer)
25013154	Vinyl toluene
25321419	Xylene Sulfonic Acid
1300738	Xylidine

GROUP IV

CAS No.	Chemical Name
107028	Acrolein
79107	Acrylic acid
107051	Allyl chloride
109751	Allyl Cyanide
1762954	Ammonium Thiocyanate
27497514	Bromonaphthalene (POM)
109740	Butyronitrile
75150	Carbon disulfide
25586430	Chloronaphthalene (POM)
91178	Decahydronaphthalate
131179	Diallyl Phthalate
109897	Diethylamine
115106	Dimethyl ether-N,N
75183	Dimethyl sulfide
67685	Dimethyl sulfoxide
124403	Dimethylamine
75003	Ethyl chloride (Chloroethane)
111308	Glutaraldehyde
106694	Hexanetriol (1,2,6-isomer)
78591	Isophorone
108214	Isopropyl acetate
67561	Methanol
79209	Methyl acetate
105453	Methyl acetoacetate
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
60344	Methyl Hydrazine
108112	Methyl isobutyl carbinol
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl Isocyanate
74931	Methyl Mercaptan
80626	Methyl methacrylate
74895	Methylamine
91203	Naphthalene
85472	Naphthalene sulfonic acid (a-isomer) (POM)
120183	Naphthalene sulfonic acid (b-isomer) (POM)
90153	Naphthol (a-isomer) (POM)
135193	Naphthol (b-isomer) (POM)
86577	Nitronaphthalene (1-isomer)
594423	Perchloromethyl mercaptan
75445	Phosgene
123386	Propionaldehyde
71238	Propyl alcohol (n-isomer)
540545	Propyl chloride
107108	Propylamine
78875	Propylene dichloride (1,2-Dichloropropane)
124414	Sodium Methooxide
78002	Tetraethyl lead
119642	Tetrahydronapthalene (Tetralin) (POM)
121448	Triethylamine
75503	Trimethylamine
933482	Trimethylcyclohexanol
2408379	Trimethylcyclohexanone

GROUP V

CAS No.	Chemical Name
105577	Acetal
75865	Acetone cyanohydrin (CN compound)
	Alkyl naphthalenes (no CAS# assigned) (POM)
75252	Bromoform
141322	Butyl acrylate (n-isomer)
78922	Butyl alcohol (s-isomer)
75650	Butyl alcohol (t-isomer)
96737	Butyl benzoic acid (p-tert-isomer)
13952846	Butylamine (s-isomer)
75649	Butylamine (t-isomer)
63252	Carbaryl
9004357	Cellulose acetate
75456	Chlorodifluoroethane
25167800	Chlorophenols
7790945	Chlorosulfonic acid
420042	Cyanamide
506774	Cyanogen chloride (CN compound)
108805	Cyanuric acid
108770	Cyanuric chloride
123422	Diacetone alcohol
137097	Diaminophenol Hydrochloride
74953	Dibromoethane
96231	Dichlorohydrin
461585	Dicyanadimide
579668	Diethylaniline (2,6-isomer)
75376	Difluoroethane
25167708	Diisobutylene
27554263	Diisooctyl phthalate
674828	Diketene
26675174	Dodecylaniline
122510	Ethyl orthoformate
95921	Ethyl oxalate
75047	Ethylamine
9004573	Ethylcellulose
105566	Ethylcyanoacetate
77474	Hexachlorocyclopentadiene
629118	Hexamethylene glycol
74908	Hydrogen Cyanide (CN Compound)
106638	Isobutyl Acrylate
115117	Isobutylene
463514	Ketene
	Linear alkyl sulfonate (no CAS# assigned)
141797	Mesityl oxide
79414	Methacrylic acid

CAS No.	Chemical Name
563473	Methallyl Chloride
96333	Methyl Acrylate
78933	Methyl ethyl ketone (2-Butanone)
1634044	Methyl Tert Butyl Ether
77758	Methylpentynol
121013	n-Dodecylbenzene
75989	Neopentanoic acid
25154523	Nonylphenol
88120	N-Vinyl-2-Pyrrolidine
25322683	Polyethylene glycol
25322694	Polypropylene glycol
27138674	Resorcylic acid
9004324	Sodium carboxymethyl cellulose
143339	Sodium Cyanide
141537	Sodium formate
98066	tert-Butylbenzene
75741	Tetramethyl lead
110189	Tetramethylethylenediamine
7756947	Triisobutylene
540841	Trimethylpentane (2,2,4-isomer)
57136	Urea
1300716	Xylenol
526750	Xylenol (2,3-isomer)
105679	Xylenol (2,4-isomer)
95874	Xylenol (2,5-isomer)
576261	Xylenol (2,6-isomer)
95658	Xylenol (3,4-isomer)
108689	Xylenol (3,5-isomer)

[FR Doc. 91-4888 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR PART 1053

[Ex Parte No. MC-198]

Contracts for Transportation of Property

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to consider amending or repealing its regulations (1) Prescribing the nature and content of contracts of motor contract carriers, and (2) defining contract shippers. The Commission last considered changes in the contract regulations in 1980 when it deleted the requirement that carriers file copies of their contracts. The purpose of this proceeding is to reexamine the current regulations in light of industry experience since passage of the Motor Carrier Act of 1980.

DATES: Comments are due by April 5, 1991.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-198 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz (202) 275-7956 or Richard B. Felder (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The Commission is instituting this proceeding to consider amending or repealing the regulations at 49 CFR part 1053. Section 1053.1 prescribes the nature and content of contracts of motor contract carriers; § 1053.2 relieves carriers of certain valuable commodities from the requirements of § 1053.1; and § 1053.3 defines the shippers with whom a motor contract carrier may enter into contracts. The Commission is particularly interested in reexamining the requirements of § 1053.1 that contracts be in writing, be bilateral and impose specific obligations upon both carrier and shipper, cover a series of shipments during a stated period of time, and be preserved for at least 1 year after they cease to be in force. The Commission last considered changes in the contract regulations in 1980 when it deleted the requirement that carriers file copies of their contracts with the Commission.

The Commission is aware that the Motor Carrier Act of 1980 retained the distinction between motor contract carriers and motor common carriers. It is concerned, however, that its regulations supplementing the statutory definition of a motor contract carrier may no longer be appropriate in light of changes that have taken place in the motor carrier industry over the past decade. The Commission thus is soliciting public comments on the wisdom of maintaining part 1053 in its current form.

Some questions for consideration are as follows. Should the regulations be repealed in their entirety and, if so, why? What would be the effect of a repeal on the Commission's ability to fulfill its statutory obligations? Should the regulations be repealed in part? For instance, should the Commission delete the requirements that contracts be in writing and that they be retained for at least one year after they cease to be in force. On the other hand, should the regulations be amplified? For instance, current Commission regulations do not require that contract rates be stated in or be ascertainable from the contract. Should the Commission impose such a requirement? Similarly, should the Commission amend the regulations to impose a requirement that the contract state the manner in which the statutory contract carrier criteria are to be met *vis-a-vis* the contracting shipper? Should the current regulations be retained without modification? It might be the case that the industry requires only clarification from the Commission and is not experiencing any difficulties that require modification of the current regulations.

We encourage interested persons to submit comments. After considering the comments, we will determine whether to proceed and what, if any, specific rule changes to propose.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721.)

Environmental and Energy Considerations.

We preliminarily conclude that amending or repealing the regulations governing contracts of motor contract carriers would not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis.

We preliminarily conclude that amending or repealing the subject regulations would not have a significant economic impact on a substantial number of small entities. It is possible that simplification or elimination of the rules might benefit small carriers and shippers by reducing their paperwork and enabling them to streamline their operations. We specifically request comments on this issue to assist us in making an initial finding in the event we formulate specific proposals for publication in a future notice of proposed rulemaking.

List of subjects in 49 CFR Part 1053

Motor carriers.

Authority: 49 U.S.C. 10101, 10102, 10321, and 10923, and 5 U.S.C. 553.

Decided: February 20, 1991.

By the Commission, Chairman Philbin, Vice Chairman

Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Simmons commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5286 Filed 3-5-91; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Student Community Service Project Guidelines

AGENCY: Action.

ACTION: Notice of final Student Community Service Project Guidelines.

SUMMARY: The following Notice sets out the final guidelines under which Student Community Service Projects will operate. This notice replaces Student Community Service Program guidelines which were published in the **Federal Register** November 10, 1987 (Vol. 52, No. 178, pages 43211–43215). These guidelines set forth the overall program philosophy, responsibilities of the sponsor, staff, volunteers, and volunteer placement sites. Further, the guidelines provide basic data on the administration of a Student Community Service Project.

DATES: These Guidelines shall take effect on April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Wheeler, ACTION, 1100 Vermont Avenue, NW., room 8100, Washington, DC 20525, 202/634–9424.

SUPPLEMENTARY INFORMATION: Section 420 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5060) was amended in 1979 to define the term regulation and to detail the procedures to be followed in prescribing regulations. Through its broad definition of a regulation, the section requires that "any rule, regulation, guideline, interpretation, order, or requirement of general applicability" issued by the Director of ACTION must be published with a 30-day comment period except in certain limited circumstances. These Guidelines, although not regulations under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), may, in whole or in part, be required by the DVSA to be published in proposed form for comment.

Notice of Proposed Revisions to the Student Community Service Project Guidelines was published in the **Federal Register** on January 17, 1991 (Vol. 56, No. 12, page 1784–1787). Typesetting corrections on this article were made in the **Federal Register** January 30, 1991 (Vol. 56, No. 20, page 3523). One written comment from the public was received by the Agency. This comment referred to a typesetting error which was corrected by the **Federal Register's** January 30, 1991, publication.

ACTION has determined that these guidelines are not major rules as defined in E.O. 12291. This determination is based on the proposed grants' size and purpose, neither of which will result in the economic impact of a major rule. These guidelines are noted in the Catalog of Federal Domestic Assistance, Number 72.005.

I. Introduction

This Notice sets forth the guidelines under which Student Community Service Projects will operate. Student Community Service Project guidelines are contained in seven parts:

Part I—Introduction
Part II—Purpose
Part III—Grantee Eligibility and Selection Criteria
Part IV—Grant Application Procedures
Part V—Project Management
Part VI—Student Volunteer Assignments
Part VII—Restrictions

These guidelines supersede Student Community Service Program Guidelines published in the **Federal Register**, dated November 10, 1987, and instructions and technical assistance provided to grants previously awarded under title I, part B, section 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4974).

II. Purpose

Student Community Service Projects are authorized under title I, part B, sections 111 and Sec. 114 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, 42 U.S.C. 4971, 4974). The statutory purpose of these projects is to encourage students to undertake volunteer service in their communities in such a way as to enhance the educational value of the service experiences through participation in activities which address poverty-related problems. Student volunteers must be enrolled in secondary, secondary vocational or post-secondary schools on an in-school or out-of-school basis. They serve part-time and without a stipend.

Service opportunities must result in student volunteers gaining learning experience through service in low-income communities, whether or not they receive academic credit.

The intent of Student Community Service Projects is to join community, school and youth in developing the scope and nature of volunteer experiences which serve the needs of poverty communities while securing resources by which the effort can be continued and expanded, if needed, after Federal support ends.

Local communities should determine what their problems are and how best to solve them. ACTION resources may be made available to assist in helping communities solve some of their problems through fostering student volunteer service. The community must generate increasing resources to enable the project to continue once ACTION grant funds are no longer provided. Technical assistance and training in project management, fundraising, and recruiting will be provided by ACTION as required.

III. Grantee Eligibility and Selection Criteria

The following criteria will be considered by ACTION in the selection and approval of Student Community Service Projects:

A. The applicant must be a Federal, State, or local agency, or private non-profit organization or foundation in the United States, the District of Columbia, Virgin Islands, Puerto Rico, American Samoa, or Guam, which has the authority to accept and the capability to administer a student community service project grant.

B. Student volunteer activities must be poverty-related in scope and otherwise comply with the provisions of the legislative authority outlined in part II.

C. Grant funds must be used to initiate or expand a student volunteer community service project which addresses the needs of the low-income community.

D. The grantee must develop and maintain community support for the Student Community Service Project through a planned program including public awareness and communications.

E. Proposed community representation in the project's planning and operation, including representatives of youth groups, school systems, educational institutions, etc., must be identified in the grant application.

F. The grant application must demonstrate that project goals and objectives are quantifiable, measurable, and show benefits to the student volunteers and to the low-income community. It must describe the expected learning outcomes which will result from the service experience. The projected number of students volunteers who will serve in the project and hours of service are to be included in project goals and objectives.

G. The grant application must demonstrate how student volunteers will be recruited and how they will receive orientation appropriate to their assignments.

H. The grantee must identify resources which will permit continuation of the student community service project, if needed, upon the conclusion of Federal funding as outlined in part II.

I. The grantee must comply with all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. This includes compliance with applicable financial and fiscal requirements established by ACTION or other elements of the Federal government. This does not refer to agreements made with volunteer placement sites as discussed in part VI.

J. The grantee must ensure compliance with the restrictions outlined in part VII.

The Director of VISTA/Student Community Service Programs may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;
2. Availability of volunteer activities to students from all segments of society;
3. Applicant's accessibility to alternate resources, both technical and financial;
4. Allocation of Student Community Service resources in relation to other ACTION funds.

IV. Grant Application Procedures

A. Scope of Grant

Student Community Service Project grants are awarded for up to a twelve-month period. Requests for second- or third-year reduced funding can be sought by grantees. The levels of funding and matching requirements are published in **Federal Register** announcements of funding availability. The grantee is required to contribute a local share each year. Final determination of the actual amount of grants awards rests with the ACTION Regional Director.

ACTION seeks sponsoring organizations which can demonstrate the ability to raise sufficient local support in order to achieve 100% non-ACTION funding of their Student Community Service Projects after Federal funding ends.

Applicants for new or renewal grants must comply with the provisions of Executive Order 12372, the "Intergovernmental Review of Federal Programs" as set forth in 45 CFR part 1233. Contact the ACTION State Office for specific instructions on how to fulfill this requirement.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA/Student Community Service Projects.

B. Procedures for New Grantees

Project application forms are available from ACTION State offices, which will also establish schedules for application submission. Grant allowable costs are contained in ACTION Handbook 2650.2, Grants Management Handbook for Grantees, which is available from ACTION State or Regional offices.

Applications are to be submitted to the appropriate ACTION State Office for review and subsequently forwarded to the ACTION Regional office for comment prior to their submission to the Director of VISTA/Student Community Service Programs, who will make the final selection of new Student Community Service project grantees.

The Regional Directors will notify all applicants of the final decisions, and the Regional Grants and Contracts Officers will issue Notices of Grant Awards to the grantees upon notification from the Director of VISTA/Student Community Service Programs.

C. Procedures for Renewal Grantees

Applications for renewal projects will be evaluated using the factors identified in selecting initial grantees, as well as the grantee's compliance with these guidelines and the grantee's performance during the previous year(s), particularly in the achievement of measurable goals and objectives. All project renewals are subject to the availability of funds.

Applications for renewal for second and third years are reviewed at the ACTION State Office level and submitted to the ACTION Regional Director for final approval.

If the second- or third-year renewal application is denied, the sponsor will be notified that the ACTION Regional Director intends to deny the application for renewal; and the sponsor will be given an opportunity to show cause why the application should not be denied in accordance with 45 CFR part 1206. This regulation is available from ACTION State or Regional Offices.

V. Project Management

Sponsors shall manage grants awarded to them in accordance with the provisions of these guidelines and ACTION Handbook 2650.2, Grants Management Handbook for Grantees, which will be furnished to the sponsor at the time the initial grant is awarded.

Project support provided under an ACTION grant will be furnished at the lowest possible cost consistent with the effective operation of the project. Project costs for which ACTION funds are budgeted must be justified as being essential to project operation.

A. Local Support Contributions

The Student Community Service Project sponsor shall be responsible for providing a non-federal share contribution for each year of the grant's operation. This amount can be obtained through cash and/or allowable in-kind contributions.

Local share can include, but is not limited to, cash or in-kind contributions such as office space, office equipment, supplies, accounting services, insurance, vehicles, telephones, printing, postage, recognition, travel and personnel which directly benefit the project.

B. Reporting Requirements

Sponsors must comply with fiscal reporting requirements specified in the Notice of Grant Award and must maintain records in accordance with generally accepted principles. Records shall be kept available for inspection at the request of ACTION and shall be preserved for at least three years following the date of submission of the final Financial Status Report for each budget period.

If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

Project progress reports shall also be submitted to the ACTION State Office. Sponsors are required by ACTION to provide accurate and timely preparation and submission of project reports.

C. Insurance

Grantees are responsible and must show evidence that student volunteers, while performing their assignments, have adequate accident, personal liability, and automobile liability insurance coverage consistent with other insurance maintained by the organization, and with sound institutional and business practices.

D. Transportation

The sponsor should structure student volunteer assignments to minimize transportation expenses and requirements.

When transportation is not provided, volunteers may be reimbursed for actual costs within the limitations prescribed by the local project and the availability of funds.

E. Project Staff

Each grantee will designate a person to serve as the project director. A full-time director is desirable. A rationale for less than a full-time project director must be included with the project application. The project director should be hired within 30 days of the project start date. Supervision of the project director is the responsibility of the sponsor.

Student Community Service Project staff are employees of the grantee organization and are subject to its personnel policies and practices.

F. Community Relations

1. Community Support

A viable community support system needs to be initiated to ensure project success and project continuation without Federal funds. Project support may be sought from school districts, governmental entities, religious and service groups, foundations, the business community, youth organizations, etc. One method of enlisting and maintaining community support for the project's operation is through the establishment of a project advisory council and/or working committee of the sponsor's board. Initial outreach to representatives of these groups, as evidenced by accompanying letters of support, is seen as an effective step toward the development of the application.

2. Volunteer Recognition

With the participation of the sponsor, the staff, and volunteer placement sites, recognition should be given to student volunteers for service to the community. Projects can also provide recognition to local individuals and agencies or organizations for significant activities in support of project goals. Specific recognition activities should be reflected in the application narrative and budget.

3. Public Awareness

A strong community relations program ensures public awareness of start-up and continuing project activities. It is essential for the successful recruiting of volunteers and for the recognition of volunteer service. The project sponsor and project director should inform community, city and county officials, and the media about development, growth and success of the Student Community Service project.

VI. Student Volunteer Assignments

Student volunteers are assigned to serve low-income communities in a variety of ways. Local sponsors are expected to develop volunteer service opportunities taking into consideration the focus of the project, the age, skills, and interests of student volunteers, as well as the value of the learning experience itself.

Clear understanding concerning the responsibilities of volunteer placement sites must be reached between representatives of the grantee's project staff and the volunteer site supervisor. Agreements may be formally arranged through the utilization of a Memorandum of Understanding, a Letter of Agreement, or other means.

A formal agreement between the project staff and volunteer site will greatly assist the staff and volunteers in the management of volunteers. Issues and responsibilities concerning volunteer recruitment, orientation/training, volunteer transportation, recognition and reporting of service hours, are functions outlined in this agreement.

VII. Restrictions

A. Special Restrictions on Student Community Service Project Grantees

1. Political Activities

a. Grant funds shall not be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office or any voter registration activity.

b. No project shall use grant funds to provide services, employ or assign personnel or volunteers for, or take any action which would result in the identification or apparent identification of the project with:

(1) Any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;

(2) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any election; or

(3) Any voter registration activity.

2. Lobbying

a. No grant funds or volunteers may be used by the sponsor in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except as follows:

(1) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests a student volunteer, a sponsor chief executive, his or her designee, or project staff to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(2) In connection with an authorization or appropriation measure directly affecting operation of the program.

Regulations found in 45 CFR part 1226, "Prohibitions On Electoral and Lobbying Activities," apply fully hereto, and provide further details on the limitations of political and lobbying activities that apply to volunteers and sponsors. Each grantee is obliged to know, and to communicate to staff and volunteers, the prohibitions included therein.

3. Special Restriction on State or Local Government Employees

If the sponsor receiving a grant from ACTION is a State or local government agency, certain restrictions contained in chapter 15 of title 5 of the United States Code are applicable to persons who are principally employed in activities associated with the project. The restrictions are not applicable to employees of educational or research institutions. An employee subject to these restrictions may not:

a. Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.

b. Directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

c. Be a candidate for elective office, except in a non-partisan election. "Non-partisan election" means an election at which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential election received votes in the last preceding election at which Presidential electors were selected.

If a project staff member, whose salary is traceable in whole or in part to an ACTION grant, is also a State or local government employee, the staff member is covered by provisions of the Hatch Act, restricting in many instances public participation in partisan political activities. Questions about the coverage of the Hatch Act may be addressed to ACTION, Office of General Counsel, 1100 Vermont Avenue, NW., room 9200, Washington, DC 20525.

4. Non-discrimination

No person with responsibility for the operation of a project shall discriminate with respect to any activity or program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation.

5. Religious Activities

Volunteers and project staff funded by ACTION shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of their duties.

6. Labor and Anti-Labor Activity

No grant funds shall be directly or indirectly utilized to finance labor or anti-labor organization or related activity.

7. Non-displacement of Employed Workers

A student volunteer may not perform any service or duty which would supplant the hiring of workers who would otherwise be employed to perform similar services or duties; or result in the displacement of employed workers or impair existing contracts for service.

8. Non-compensation for Services

No volunteer or other person, organization, or agency shall request or receive any compensation for services of student volunteers. No volunteer site or any member or cooperating organization shall be requested or required to contribute, or to solicit contributions, to establish any part of a local share. This does not prevent the acceptance of cash contributions made voluntarily and without condition to the grantee for legitimate charitable purposes.

9. Volunteer Status

Student volunteers are not employees of the sponsoring organization or the U.S. Government while volunteers.

10. Nepotism

Persons selected for project staff positions may not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors unless there is concurrence by ACTION.

Authority: 42 U.S.C. 4974.

Dated in Washington, DC on February 28, 1991.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 91-5202 Filed 3-5-91; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Authority To Act as Administrator

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: This notice provides for the executive direction of the Farmers Home Administration (FmHA).

1. When the Administrator, FmHA, is absent or unable to perform the duties of the position, the Associate Administrator, FmHA, is designated to serve as Acting Administrator, FmHA.

2. When both the Administrator and the Associate Administrator are absent or unable to perform their duties, the Deputy Administrators, FmHA, are designated to perform all functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator in the following order:

A. Deputy Administrator, Program Operations

B. Deputy Administrator, Management

3. When the Administrator, the Associate Administrator, and the Deputy Administrators are absent or unable to perform their duties, the Assistant Administrators and the Director, Planning and Analysis Staff, FmHA, are designated to perform all the functions assigned by law or delegated to the Administrator, FmHA, as described in 7 CFR 2.70, and to serve as Acting Administrator, FmHA, in the following order:

A. Director, Planning and Analysis Staff

B. Assistant Administrator, Housing

C. Assistant Administrator, Farmer Programs

D. Assistant Administrator, Community and Business Programs

E. Assistant Administrator, Budget, Finance and Management

This document supersedes any previous document designating an official of the FmHA to serve as Acting Administrator, FmHA.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Timothy J. Ryan, Assistant Administrator for Human Resources, Farmers Home Administration, USDA, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 245-5561.

Dated: February 14, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-5282 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Exemption of Salvage Timber Sale Project from Appeal (Northern Region)

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement the Gird Point Salvage Timber Sale in the area of the Gird Point Fire on the Bitterroot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pp. 3342-3370.

EFFECTIVE DATE: Effective on issuance of the Decision Notice for Supplement No. 1 to the Gird Point Salvage Timber Sale Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Bertha C. Gillam, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840

Background

In July 1990, the Gird Point Fire burned and killed the timber on approximately 1,700 acres of the Bitterroot National Forest. In August 1990, a Forest Interdisciplinary Team (IDT) was assembled to analyze the opportunity to salvage trees that had been killed by the fire. The Forest IDT identified the need to quickly salvage the timber which was killed so the trees would remain merchantable for sawlogs. A decision to harvest timber on approximately 650 acres within Management Areas of the Bitterroot Forest Plan (September 1987) which provide for timber harvest in the management goals (Management Areas 1, 3a, and 3b) was signed by Acting Forest Supervisor Chuck Prausa on November 20, 1990. This decision was exempted from appeal (Federal Register, Vol. 55, No. 213, Friday, November 2,

1990). A decision to harvest timber on approximately 155 acres within Management Area 5 of the Bitterroot Forest Plan was signed by Acting Forest Supervisor Chuck Prausa on December 7, 1990. This decision was not exempted from appeal. No appeals were received on this decision. Since the proposed action was beyond the intent of the Forest Plan, a site-specific Forest Plan amendment (Amendment No. 3) was signed on December 18, 1990, to allow salvage of fire killed timber.

The bid opening for the Gird Point Fire Salvage Timber Sale was conducted on December 18, 1990. No bids were received.

In January 1991, the District Ranger, Darby Ranger District, Bitterroot National Forest, was approached by an individual who proposed an alternative method to salvage the fire killed timber. The alternative method would use an over-snow yarding method to harvest fire killed timber in Management Areas 1, 3a, 3b, and 5, and also would not build the 1.8 miles of new road that was identified in the original decision.

Planned Actions

In January 1991, the District Ranger, Darby Ranger District, Bitterroot National Forest, proposed the salvage of fire killed timber using an over-snow yarding method in Management Areas 1, 3a, 3b, and 5. Yarding systems identified as appropriate in Management Areas 1, 3a, 3b, and 5 in the original environmental document (tractor, skyline, and helicopter) would also be allowed, No new road construction will be allowed if the purchaser uses over-snow yarding equipment in MA5.

An Interdisciplinary Team (Soil Scientist, Hydrologist, Wildlife Biologist, and Forester) began scoping in January 1991. Several of the individuals that showed interest in the original decisions were contacted. The major issues identified were:

1. What is the effect of over-snow yarding on the soil and water resources?
2. Is it appropriate to use ground-based yarding systems in Management Area 5?
3. What is the effect of over-snow yarding systems on slopes over 40 percent?
4. How can the wildlife reserve tree prescription be modified to retain the needed reserve trees while at the same time making the sale more economical to operate?

The Interdisciplinary Team evaluated the effects of the over-snow yarding proposal against the Proposed Action in the original environmental assessment. The Proposed Action in the Supplement to the Gird Point Fire Environmental Assessment would harvest fire killed timber on approximately 920 acres and produce an estimated 6 MMBF of timber. The Proposed Action is within Management Areas 1, 3a, 3b, and 5 as indicated in the Bitterroot Forest Plan, September 1987.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale and the accompanying work, the process according to 36 CFR part 217 is being followed. Under this regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as, wildfires * * * when the Regional Forester * * * determines and gives notice in the Federal Register that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice in the **Federal Register**, the Decision Notice for the Supplement to the Gird Point Salvage Sale Environmental Assessment will be signed by the Forest Supervisor, Bitterroot National Forest. Therefore, this decision will not be subject to review under 36 CFR part 217.

Dated: February 27, 1991.

John M. Hughes,

Deputy Regional Forester Northern Region.

[FR Doc. 91-5244 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-11-M

Upper Ruby Cattle and Horse Allotment; Beaverhead National Forest, Sheridan Ranger District, Madison County, MT; Environmental Impact Statement, Comment Period Extension

Due to the complexity of the analysis, numerous parties have requested the comment period for the Upper Ruby Cattle and Horse Allotment Management Plan Draft Environmental Impact Statement be extended. I have extended the review period to April 15, 1991.

The Notice of Availability of a Draft Environmental Impact Statement, published by the Environmental Protection Agency in the **Federal Register** of January 18, 1991, page 2016 (56 FR 2016), is hereby amended (EIS No. 910009).

For further information contact: Ron Stellingwerf, District Ranger, Sheridan Ranger District, P.O. Box 428, Sheridan, MT 59479; telephone 406-842-5432.

Dated: February 28, 1991.

R.H. Stellingwerf,

District Ranger.

[FR Doc. 91-5384 Filed 3-5-91; 8:45 am]

BILLING CODE 3410-11-M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of a meeting of the Committee on Judicial Review of the Administrative Conference of the United States. The meeting will be held at 10 a.m., on Wednesday, March 13, 1991, at the Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

The committee will meet to discuss draft reports on specialized courts and coordination of judicial review in administrative law prepared by Professor Harold Bruff, University of Texas School of Law.

For further information concerning this meeting, contact: Mary Candace Fowler, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC. (Telephone: 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: March 4, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91-5472 Filed 3-5-91; 8:45 am]

BILLING CODE 6110-01-M

Committee on Judicial Review; Cancellation Notice—March 8, 1991 Meeting

The Administrative Conference of the United States gives notice of cancellation of a meeting of the Committee on Judicial Review that was scheduled at 10 a.m., Friday, March 8, 1991, at the Administrative Conference

of the United States (Library), 2120 L Street, NW., suite 500, Washington, DC.

The notice of meeting was published on February 26, 1991 at 56 FR 7833.

Dated: March 4, 1991.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 91-5473 Filed 3-5-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-005]

Frozen Concentrated Orange Juice from Brazil; Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil. Interested parties who object to this termination must submit their comments in writing not later than March 31, 1991.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1983, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil (48 FR 8839).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on frozen concentrated orange juice from Brazil for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties 19 CFR 355.25(d)(4)(iii). Accordingly, as required by 19 CFR 355.25(d)(4)(i), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than March 31, 1991, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by March 31, 1991, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: February 26, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5205 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to the availability of funds. The cost of performance for the first 12 months is estimated at $230,400 in Federal funds and a minimum of $40,659 in non-Federal contributions for the budget period August 1, 1991 to July 31, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contributions, or combinations thereof. The MBDC will operate in the New Orleans Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is April 9, 1991. Applicants should mail the completed applications

to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before the closing date. Applications must be post marked on or before April 9, 1991. Anticipated processing time of this award is 120 days.

Note: Please mail completed applications to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained through the Dallas Regional Office. A pre-bid conference will be held. Please call Ms. Guevara to be advised of date, time and place.

11.800 Minority Business Development, (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of are made to pay the debt.

Notice: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants Loans, and Cooperative Agreements" and the SF-LLL "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 91-5238 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Dr. James T. Harvey (P368B)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039-0450.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Harbor seals (*Phoca vitulina*) 550.

4. *Type of Take:* The applicant proposes to capture, blood sample, inject with tetracycline, tag with flipper and radio tags and release 100 harbor seals annually. During the tagging study and while collecting fecal samples on haul-out sites, up to 450 may be harassed.

5. *Location and Duration of Activity:* Activities will occur in February—March and August—October in Elkhorn Slough, near Monterey and near Santa Cruz. Also San Francisco south to Big Sur over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427-2289); and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213/514-6196).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-5187 Filed 3-5-91 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: DoD, Department Veterinary Pathology (P473)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Engangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

1. *Applicant:* Department of Veterinary Pathology, Armed Forces Institute of Pathology, Washington, DC 20306-6000.

2. *Type of Permit:* Scientific research and scientific purposes.

3. *Name and Number of Marine Mammals:* Unspecified.

4. *Type of Take:* The applicant requests authorization to import and re-export specimens from marine mammals of the orders Pinnipedia (except walrus) and Cetacea. The applicant will examine, catalog and archive an unspecified number of formalin-fixed samples, and blood, body fluid, and other frozen tissue samples that may be taken from individual animals. These will be received from various

researchers from private, academic and governmental institutions.

5. *Location and Period of Activity:* Samples will be collected and imported on an opportunistic basis from various locations worldwide over a 5-year period.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

By appointment: Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, Maryland 20910 (301/427-2289).

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200.

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Juneau, Alaska 99802 (907/586-7221).

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C157000, Washington 98115 (206/526-6150).

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (893-3141).

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415 (213/514-6196).

Dated: February 27, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-5188 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in the Philippines

February 28, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kin-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Effective on March 1, 1991, shipments of cotton textile products in Category 359, other than swimwear, will require a Category 359-O visa.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990). Also see 52 FR 11308, published on April 8, 1987.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 28, 1991.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 3, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in the Philippines.

Effective on March 1, 1991, you are directed to require a 359-O [1] visa for cotton textile products in Category 359, other than swimwear, produced or manufactured in the Philippines and exported from the Philippines on and after March 1, 1991.

Merchandise in Category 359 which has been exported from the Philippines prior to March 1, 1991 shall be permitted entry if visaed as Category 359 or 359-O.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-5201 Filed 3-5-91; 8:45 am]

BILLING CODE 3510-DR-M

/1/ Category 359-O: all HTS numbers except 6112.39.0010, 6112.49.0010, 6211.11.2010, 6211.11.2020, 6211.12.3003 and 6211.12.3005 (Category 359-S).

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, applicable form, and applicable OMB control number: Industrial Base Program Production Capacity and Crisis Production Survey; DD Form's X120 and X120-1; OMB Control Number 0704-0037

Type of request: Reinstatement.

Average burden hours minutes per response: 2.5 hours.

Responses per respondent: 1.

Number of respondents: 29,425.

Annual burden hours: 73,562.5.

Annual responses: 29,425.

Needs and uses: The DD Form X120 is used by the DoD Acquisition Activities to obtain a basic understanding of the industrial production capacity for defense items. It identifies current production by month, capability to accelerate production, and critical components required for the item. The DD Form X120-1 is used by the industrial base activities to selectively expand their understanding of the industrial production capacity for defense items and to acquire the necessary data for developing planned producer production commitments. It identifies maximum production by month, critical components, equipment, facilities, processes, and labor skills required for the item, as well as foreign sources, and requests identification of potential commercial substitutes/specifications/standards.

Affected public: Businesses or other for-profit.

Frequency: Biennial.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5267 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Foreign Operations; Determination

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this letter provides notification that during Fiscal Year 1991 the United States Government will transfer to the Government of Mexico 18,178 M-1 Carbines (to be utilized by the Mexican Navy/Marines) and 30,000 M-1 (to be utilized by the Mexican Army).

This action is required to ensure that Mexico is afforded the opportunity of rapidly obtaining M-1 Carbines at no cost. These weapons are needed to enable the military forces in Mexico to participate with local law enforcement agencies in a comprehensive national anti-narcotics enforcement program, by conducting activities within Mexico and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these carbines will be used primarily in support of anti-narcotics activities.

The Director, Defense Security Assistance Agency, Mr. Teddy G. Allen certifies that the M-1 Carbines are needed by Mexico and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5272 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on March 14, 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5266 Filed 3-5-91; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary, Defense (DOD).

ACTION: Proposed New Record System.

SUMMARY: The Office of the Secretary of Defense proposes to add one new record system notice to its inventory of systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The proposed new record system notice is set forth below.

DATES: The proposed new system will be effective April 5, 1991, unless comments are received which might result in a contrary determination.

ADDRESSES: Mr. Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, The Pentagon, Washington, DC 20301-1155. Telephone (703) 697-2501 or AUTOVON 227-2501.

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 11807, Apr. 7, 1986
51 FR 17508, May 13, 1986
51 FR 44668, Dec. 11, 1986
52 FR 23334, Jun. 19, 1987
53 FR 15868, May 4, 1988
53 FR 27894, Jul. 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989
55 FR 17655, Apr. 26, 1990
55 FR 20180, May 15, 1990
55 FR 21429, May 24, 1990
55 FR 35449, Aug. 30, 1990
55 FR 49405, Nov. 28, 1990

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on February 25, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

Dated: March 1, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 08

SYSTEM NAME:

DoD Foreign Visits System (FVS).

SYSTEM LOCATION:

Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301-2200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens acting as representatives of various foreign governments who have requested access to DoD installations, activities or Defense contractors on matters relating to mutual security and arms corporation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of lists of individuals cleared for access to DoD installations, activities, or Defense contractors. Information on the lists consists of name, date and place of birth, security clearance, position, and an individual identification number which may be the Social Security Number of that person.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 90-629, "The Foreign Military Sales Act," October 22, 1968 and Executive Order 9397.

PURPOSE(S):

To enhance security and provide consistent application of policy in dealings with other governments by

providing end-to-end automation support to the visits process, thus improving responsiveness and the use of personnel resources by using state-of-the-art automation and communication capabilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the OSD compilation of record system notices also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING/ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer and computer-output products, including message traffic output.

RETRIEVABILITY:

Records may be retrieved by individual's name or Social Security Number, or visit ID number.

SAFEGUARDS:

Records are stored under lock and key, in secure containers, or on electronic media with intrusion safeguards; personnel having access to this data are trained in the requirements of protecting Privacy Act information.

RETENTION AND DISPOSAL:

The records are retained for the duration of the cooperative arms or mutual security agreement or program between the U.S. government and the foreign government or international organization, or for ten years, whichever is sooner. Records will be disposed of by erasing magnetic media or burning or shredding paper ccpies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301–2200.

Individuals must provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, place visited, and dates of visit.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address inquiries to the Director, Security Policy Automation Directorate, Office of the Deputy Under Secretary of Defense (Security Policy), Washington, DC 20301–2200.

Individuals must provide sufficient proof of identity such as full name, Social Security Number, date and place of birth, place visited, and dates of visit.

CONTESTING RECORDS PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

Information is obtained solely from the foreign country or international organization sponsoring the individuals for whom a visit to the DoD installation, activity, or Defense contractor is being requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–5270 Filed 3–5–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Directed Energy Weapons for Delay & Denial Security Systems will meet on 26–27 March 1991, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington VA, from 8 a.m. to 5 p.m.

The purpose of this meeting is to obtain information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subpararaphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–5240 Filed 3–5–91; 8:45 am]

BILLING CODE 3910–01–M

National Security Agency/Central Security Service

Privacy Act of 1974; New Record Systems

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: New record system notice.

SUMMARY: The National Security Agency/Central Security Service proposes to add one new record system to its existing inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 522a). The proposed new record system notice is set forth below.

DATES: The proposed action will be effective without further notice on April 5, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755–6000. Telephone (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service record systems notices subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

50 FR 22585, May 29, 1985 (DoD compilation, changes follow)
52 FR 36818, Oct. 1, 1987
52 FR 41758, Oct. 30, 1987
55 FR 27871, Jul. 6, 1990

The new record system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on February 25, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52738, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: March 1, 1991.

GNSA18

SYSTEM NAME:

NSA/CSS Operations Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified in foreign intelligence or counterintelligence reports and supportive materials, including individuals involved in matters of foreign intelligence interest,

information, system security, the compromise of classified information, or terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended, 50 U.S.C. Section 403(d)(3) (Pub. L. 80-253); Executive Order 12333, 3 CFR part 200 (1981); Executive Order 12356; Executive Order 9397; section 506(a), Federal Records Act of 1950 (44 U.S.C. 3101).

PURPOSE(S):

To maintain records on foreign intelligence and counterintelligence matters relating to the mission of the National Security Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To U.S. Government agencies, and in some instances foreign Government agencies or their representatives, to provide foreign intelligence, counterintelligence, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The "Blanket Routine Uses" published at the beginning of the NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

RETRIEVABILITY:

Information is retrieved by category of information contained therein, including by name, title, Social Security Number, or identification number.

SAFEGUARDS:

For paper, computer printouts, audio recordings, and microfilm—secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data is archived as a permanent record. All other records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

CONTESTING RECORD PROCEDURE:

The NSA/CSS rules for contesting contents and appealing initial determinations are contained in NSA/CSS Regulation No. 10-35; 32 CFR part 299a; or may be obtained from the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this file may be exempt pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (1), (2) and (3), (c) and (e) and is published in NSA/CSS Regulation No. 10-35 and the Code of Federal Regulations at 32 CFR part 299a.

[FR Doc. 91-5269 Filed 3-5-91; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs (NABIEP). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE AND TIME: April 1, 1991—9 a.m. to 3:30 p.m.

LOCATION: The Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001-1527, Telephone: 202-628-2100.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Grayson, Acting Executive Director, National Advisory Board on International Education Programs, U.S. Department of Education, 7th & D Streets, SW., room 3915, Washington, DC 20202-5151, Telephone: 202-708-5656.

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986 (Pub. L. 99-498; 20 U.S.C. 1131). The Board's mandate is to

advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public.

The agenda will include (1) A Report on the current reauthorization act; (2) reports on current issues for the Center for International Education Programs; (3) a general discussion of the Center for International Programs and new directions to pursue; (4) a report from the Center for International Education Business at the University of Maryland, by Lee Preston, the Director; and (5) Board business for FY 1991.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Education, from 8 a.m. to 4 p.m., ROB-3, 7th & D Streets, SW., room 3915, Washington, DC.

Dated: February 25, 1991.

Authority: 5 U.S.C.A. Appendix 2

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91-5204 Filed 3-5-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10928-001 Washington]

Surrender of Preliminary Permit; Snoqualmie River Energy, Inc.

February 27, 1991.

Take notice that Snoqualmie River Energy, Inc., permittee for the DOT Diversion Hydroelectric Project No. 10928, to be located on the South Fork Snoqualmie River in King County, Washington, has requested that its preliminary permit be terminated. The preliminary permit was issued on August 16, 1990, and would have expired on July 31, 1993.

The permittee filed the request on February 5, 1991, and the preliminary permit for Project No. 10928 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5191 Filed 3-5-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-06-NG]

American Central Gas Companies, Inc.; Application to Export Natural Gas to Mexico

AGENCY: Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico..

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 23, 1991, of an application filed by American Central Gas Companies, Inc. (American Central) requesting blanket authorization to export from the United States to Mexico up to 200,000 MMBtu per day of natural gas over a two-year period commencing with the date of first delivery. American Central intends to use existing pipeline facilities within the United States and at the international border for transportation of the exported gas. American Central states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 5, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: American Central, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is engaged in the gathering, processing and marketing of natural gas, and owns gathering and processing facilities in the States of Oklahoma, Texas, Louisiana and Mississippi. American Central intends to export natural gas to Mexico for spot market sales both for its own account as well as for the accounts of others. The gas to be exported will be supplied by U.S. producers, markets and pipelines. The Mexican purchasers of the gas are expected to include industrial end-users, agriculture users, electric utilities, pipelines and local distribution companies. American Central states that all export sales will result from arms-length negotiations and that prices will be determined by market conditions.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted, the authorization may specify a two-year aggregate, rather than a daily volume, in order to maximize operating flexibility.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices or intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to

this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Central application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-5289 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket Nos. 90-104-NG and 90-105-NG]

Broad Street Oil & Gs Co.; Order Granting Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Broad Street Oil & Gas Co. (Broad Street) authorization to import and export natural gas from and to Canada. The order issued under FE Docket Nos. 90-104-NG and 90-105-NG authorizes Broad Street to import up to 290 Bcf and export up to 290 Bcf of natural gas from and to Canada over a two-year period commencing with the date of first delivery of imports or exports.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-5290 Filed 3-5-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-08-NG]

Consolidated Edison Co. of New York, Inc.; Application to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on January 28, 1991, of an application filed by Consolidated Edison Company of New York, Inc. (Con Edison), requesting blanket authorization to import up to 146 Bcf of natural gas from Canada over a two-year period commencing with the date of first delivery. Con Edison intends to use existing pipeline facilities within Canada and the United States. Con Edison states that it will submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., April 5, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Charles E. Blackburn, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7751.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: Con Edison is combination gas, electric, and steam utility company whose rates and services are fully regulated by the Public Service Commission of the State of New York. Con Edison proposes to purchase gas from a variety of Canadian suppliers on both a firm and interruptible basis at market responsive prices and terms. Con Edison states that the contractual arrangements will provide it with the flexibility of additional sources of supply for resale to its customers or for its own use.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this

application, should comment on the issue of competitiveness as set forth in the policy guidelines regarding the requested import authority. The applicant asserts that imports made under the proposed arrangement will be competitive. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Con Edison's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on February 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–5291 Filed 3–5–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of February 18 Through February 22, 1991

During the week of February 18 through February 22, 1991 the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: February 28, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Leemon Oil Co., Detroit, MI, LEE–0019 Reporting Requirements

Leemon Oil Company (Leemon) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report," and Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report." If the exception request is granted, Leemon would not be required to file these forms. On February 19, 1991, the DOE issued a Proposed Decision and Order which tentatively denied Leemon's application for exception relief.

Teesdale Oil Co., Bridger, MT, Lee–0021 Reporting Requirements

Teesdale Oil Co. filed an Application for Exception, which if granted, would relieve the firm from filing Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." On February 22, 1991, the DOE issued a Proposed Decision and Order in which it determined that Teesdale Oil did not meet the standards for exception relief, i.e. no serious hardship or gross inequity.

[FR Doc. 91–5292 Filed 3–5–91; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Proposed

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of

$105,000.00, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with John R. Adams (Adams), Case No. LEF-0020. The OHA has tentatively determined that the funds will be distributed to customers which purchased refined petroleum products from Adams during the period December 1, 1973 through May 31, 1975

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register, and they should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a prominent reference to case number LEF-0020.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $105,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, on February 28, 1990. The funds were paid by Adams towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has tentatively determined to distribute the Adams settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Adams who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section IV of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of covered refined petroleum products which they purchased from Adams during the December 1, 1973 through May 31, 1975, refund period. In the Proposed Decision, we listed those Adams customers who are prohibited from receiving Adams refund monies due to their possible participation in the alleged violations underlying Adams' compromise settlement.

Any settlement funds remaining after valid claims are paid in the first stage may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 27, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: John R. Adams.
Date of Filing: July 18, 1990.
Case Number: LEF-0020.

On July 18, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which John R. Adams, formerly doing business as J.R. Adams Oil Company, remitted to the DOE.[1] Adams has remitted $105,000.00 pursuant to a compromise settlement, to which $42,580.02 in interest has accrued as of January 31, 1991. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requests that the OHA establish special refund procedures to remedy the effects of Adams' alleged regulatory violations.

I. Background

Adams sold a range of refined petroleum products covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et. seq.* Adams was a "reseller-retailer" subject to the price regulations set forth at 10 CFR part 212, subpart E, between August 19, 1973 and January 27, 1981.

During the period of petroleum price controls, the ERA conducted an audit of Adams' operations to determine its compliance with the DOE regulations. The ERA's audit of Adams covered the company's sales during the period between December 1973 and May 31, 1975. As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) in 1984 alleging that Adams had not complied with the refiner price regulations in its refined product sales.[2]

On October 21, 1985, Adams entered into a consent order with the DOE resolving issues of its alleged violation of the DOE regulations between December 1973 and January 1981 (the consent order period). Without admitting any violations of these regulations, Adams agreed to remit monies to the DOE under the provisions of the consent order. On February 20, 1990, the DOE obtained a consent judgment from the U.S. District Court for the Western District of Oklahoma enforcing the 1985 consent order. On February 28, 1990, the DOE received a compromise settlement from Adams resolving issues of Adams' adherence to the 1985 consent order and the 1990 consent judgment.

Since $42,580.02 in interest has accrued, as of January 31, 1991, on the $105,000.00 remitted under the compromise settlement, a total of $147,580.02 is available for disbursement pursuant to the compromise settlement. These funds are held in an interest-bearing escrow account as the Department of the Treasury awaiting a determination of their proper disposition.

II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA may utilize in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of Subpart V and the authority of the OHA to design refund procedures may be found in *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and in *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

[1] All references herein to "Adams" shall be deemed to include both John R. Adams individually and J.R. Adams Oil Company.

[2] In December 1979, John R. Adams pled guilty to an Information filed in the U.S. District Court for the Western District of Oklahoma relating to his violation of the petroleum price regulations in twenty specific 1974 transactions.

We have considered the ERA's petition for the implementation of refund procedures under the Subpart V mechanism with respect to the Adams settlement monies and have determined that such refund procedures are appropriate. This Proposed Decision and Order establishes the OHA's tentative plan to distribute these funds.

III. Proposed Refund Mechanism and Refund Period.

The 1985 consent order and subsequent court actions between the DOE and Adams settled issues of Adams' alleged violation of regulations governing the pricing of refined petroleum products. These issues were based upon a 1984 PRO alleging that Adams did not properly calculate its refined product selling prices under the refiner price rule. Since no information in the enforcement record indicates that Adams participated in the refining, processing, or reselling of crude oil and Adams' alleged violations were solely attributable to refined product operations, all of the Adams settlement funds will be made available for distribution to persons who purchased Adams refined petroleum products.

We propose that applications in this refund proceeding be based solely on purchases of covered Adams petroleum products made between December 1, 1973 and May 31, 1975 (the "refund period"). This refund period represents the period of Adams' operations audited by the ERA and during which Adams' alleged regulatory violations occurred. Even though the 1985 consent order covered a duration longer than the proposed refund period, we believe that the refund period should reflect the isolated pattern of Adams' alleged violations. *Accord Cloyce K. Box*, 15 DOE ¶85,001 (1986) (*Box*) (refund period restricted to the 4½ months during which the alleged violations transpired.) [3]

IV. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for the Adams settlement funds. Purchasers of refined petroleum products from Adams during the refund period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be dispersed to the state governments for indirect restitution. Our experience with Subpart V refund proceedings indicates that potential claimants will consist of (1) end-users, (2) regulated entities, such as public utilities, and cooperatives, and (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

The only purchasers of Adams petroleum products during the refund period which are ineligible for refunds are those parties identified in the enforcement record as having participated with Adams in its alleged violations.[4] Since the Adams settlement monies are intended for those injured by Adams' alleged overcharges, we do not believe that it would be appropriate to compensate parties who may have themselves participated in and benefitted from the alleged overcharges covered by the Adams settlement. *See Box* at 88,002. Additionally, the stricture against "unclean hands" in the equitable subpart V refund proceedings prevents the parties described above from receiving Adams settelement funds. *Id.*

A. Claims Based on Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Adams during the December 1, 1973 through May 31, 1975, refund period. If the petroleum products were not purchased directly from Adams, the claimant must establish that they originated with Adams. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Adams' alleged overcharges. The two distinct elements generally required in such an injury showing are (1) the existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought, [5] and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges. *See Vickers Energy Corp./ Hutchens Oil Co. Inc.*, 11 DOE ¶85,070 at 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Adams. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶85,257 (1984), *affirmed sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985).

1. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring burdensome expenses, and aids in the efficient evaluation of refund claims. *See, e.g., Texaco Inc.*, 20 DOE ¶85.147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent subpart V regulations at 10 C.F.R. 205.282(e). Accordingly, we propose to adopt the presumptions described below.

a. *Calculation of Refunds.* We will adopt a presumption that the alleged overcharges were dispersed equally in all of Adams' sales of regulated (covered) refined petroleum products during the refund period and, thereby, refunds will be made on a per gallon, or "volumetric," basis.[6]

In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices.

Under this volumetric method, a claimant's "allocable share" of the settlement fund is equal to the number of gallons of covered petroleum products which it purchased from Adams during the refund period multiplied by the per gallon (volumetric) refund amount.[7] In

[3] Cloyce K. Box was a business associate of John R. Adams, and the alleged underlying the *Box* special refund proceeding were substantially the same as those underlying this Decision.

[4] The companies and individuals linked to Adams' alleged violations and, thereby prohibited from receiving Adams refund monies are as follows: CLB Enterprises, Inc.—Dan Baxter; Consolidated Materials, Inc.—Boyce Box; OKC Corporation—Cloyce K. Box; OKC Trading Company—Carl Lavery; Quality Oil—Jean Parker; Stonewalk Corporation—Phil Parker.

[5] Claimants which have previously obtained refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. *See Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶85,090 at 88,179 (1987). Additionally, a claimant attempting to show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum product) or for any prior month. See *Standard Oil Co. (Indiana)/ Suburban Propane Gas Corp.*, 13 DOE ¶85,030 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the calimant to approximate those costs banks. *See Guld Oil Corp./ Sturdy Oil Co.*, 15 DOE ¶85,187 (1988).

[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Adams' alleged overcharges. *See. e.g., Mobil Oil Corp./The Atchison, Topeka and Santa Fe Railway Co.*, 20 DOE ¶ 85,788 (1990); *Mobil Oil Corp./Marine Corps Exchange Service*, 17 DOE ¶ 85,714 (1988). Such a claim will only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and it absorbed those overcharges. *See Panhandle Eastern Pipeline Co./Western Petroleum Co.*, 19 DOE ¶ 85,705 (1989). To the Degree that a claimant makes this showing, it will receive an above-volumetric refund.

[7] The petroleum products sold by Adams which were subject to the petroleum price regulations and their respective decontrol dates are as follows: Liquid Asphalt—April 1, 1974; Residual Fuel Oil—

Continued

the present refund proceeding, we have computed the per gallon refund amount to be $0.00093.[8] Using this volumetric amount, a claimant would be eligible for a refund of $930 per one million gallons purchased. In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Adams settlement fund since the time of its deposit in the appropriate escrow account.[9]

We also propose to adopt various presumptions concerning a claimant's injury, which are listed below.

b. *End-Users* In accordance with prior subpart V refund proceedings, we propose to adopt the presumption that end-users of Adams petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Adams' alleged overcharges. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum price regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. *See TOGCO* at 88,209. Accordingly, we propose that end-users will only be required to establish their purchase volumes of covered Adams petroleum products during the refund period to make sufficient showings that they were injured by the alleged overcharges.

c. *Regulated Bodies and Cooperatives* We propose that a claimant whose prices for goods and services are regulated by a governmental body (e.g. public utilities), or an agricultural cooperative, will only need to submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will (1) pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. *See Exxon* at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass any refunds resulting from the alleged overcharges to its customers and member-customers, respectively. Accordingly, these firms will not be required to make detailed demonstrations of injury to receive refunds.[10]

d. *Retailers, Resellers, and Refiners*—i. *Small Claims Presumption* We propose the adoption of a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Adams petroleum products and possesses an allocable share of the settlement fund of $5,000 or less, exclusive of interest, was injured by the alleged overcharges. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Adams petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the large number of routine refund claims expected.[11]

ii. *Mid-Level Claims Presumption*—Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Adams settlement fund exceeds $5,000, exclusive of interest, may elect to receive either $5,000 or 40 percent of its allocable share, whichever is greater, also exclusive of interest.[12] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Adams' alleged overcharges. *See Total Petroleum, Inc.*, 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we determined product-specific levels of injury through detailed evaluations. *See, e.g., Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we propose to adopt, in the present refund proceeding, a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Adams petroleum products to be eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater.[13]

iii. *Spot Purchasers*—We propose to adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Adams did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396–97. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-

June 1, 1976; No. 2 Fuel Oil—July 1, 1976; Jet Fuel—February 26, 1979; Motor Gasoline—January 28, 1981.

[8] We obtained the per gallon refund figure by dividing the principal portion of the Adams settlement fund ($105,000.00) by the approximate volume of refined petroleum products sold by Adams between the beginning of the refund period (December 1, 1973) and the earlier of the end of the refund period (May 31, 1975) or the date of decontrol for each relevant product (113,000,000 gallons).

[9] As in prior cases, we propose to establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 16,190 gallons of petroleum products from Adams would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. *See Exxon Corp.*, 17 DOE ¶ 85,590 at 89,150 (1988) (*Exxon*).

[10] A cooperative's purchases of Adams petroleum products which were subsequently resold to non-members will be treated in a manner consistent with purchases made by other resellers. *See Total Petroleum, Inc./Formers Petroleum Cooperative, Inc.* 19 DOE ¶ 85,215 (1989).

[11] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 5,376,344 gallons of Adams petroleum products during the refund period.

[12] Under the mid-level injury presumption, a claimant which purchased between 5,376,344 gallons and 13,440,860 gallons of Adams petroleum products would be eligible to receive a principal (exclusive of interest) refund a $5,000. A claimant purchasing more than 13,440,860 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share.

[13] A claimant who attempts to make a detailed injury showing in order to obtain 100 percent of its allocable share but, rather, provides evidence leading us to conclude that it passed through all of the alleged overcharges, or that it was injured to a lesser degree than is presumed herein, may not necessarily receive a full refund under an injury presumption. Instead, such a claimant may receive a refund reflecting the level of injury established in its application.

injury and to establish the degree to which it was injured in its spot purchases from Adams.[14]

B. Allocation Claims

We may also receive claims based upon Adams' alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 CFR part 211. Any such applications will be evaluated with reference to the standards established in Supart V implementation cases such as *Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as *Mobil Oil Corp./ Aromalene Oil Co.,* 20 DOE ¶ 85,155 (1990); *Mobil Oil Corp./Reynolds Industries, Inc.,* 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate (1) the existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroelum products as required by 10 CFR part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Adams. *See Marathon Petroleum Co./Research Fuels, Inc.,* 19 DOE ¶ 85,575 (1989), action for review pending, No. CA3–89–2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Adams. In determining the amount of any allocation refund, we will utilize any available information regarding the portion of the Adams settlement fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the consent order underlying the Adams fund was the result of a negotiated settlement of the issues identified in the enforcement action against Adams and the amount of the settlement fund is less than Adams' potential liability under that action, we will prorate allocation refunds whch would otherwise be disproportionately large in relation to the settlement fund.

C. Distribution of Funds Remaining After the First Stage

We propose that any funds remaining in the Adams settlement fund after the payment of all valid first-stage claims be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–7. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to meet the claims of injured parties in Subpart V refund proceedings and make those funds available to state governments for use in four identified energy conservation programs. The Secretary has delegated these duties to the OHA, and any funds in the Adams fund that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by John R. Adams and J.R. Adams Oil Company pursuant to the February 28, 1990, compromise settlement and deposited in Consent Order No. 660H00060 shall be distributed in accordance with the foregoing Decision and Order.

[FR Doc. 91–5293 Filed 3–5–91; 8:45 am]

BILLING CODE 6450–01–M

[14] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3911–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Nuclear Regulatory Commission Licensees (EPA ICR # 1580). This ICR requests approval for a new collection.

Abstract: The Office of Radiation Programs will survey NRC licensed facilities in June 1991, to determine whether the NRC program provides an ample margin of safety to members of the general public residing near these facilities. EPA will use the information to estimate the maximum individual radiation dose. Based on that estimate, EPA will determine whether the regulatory program established by the NRC provides an ample margin of safety to protect the public health or whether EPA must promulgate regulations establishing a standard for radionuclide emissions from NRC licensed facilities. The information to be collected from each building that handles unsealed radionuclides at the NRC facility includes: principal activities at facility, building dimensions, stack/vent parameters, types of residents and businesses at the facility, and estimates or measures of the radionuclide emissions from each stack/vent.

Burden statement: The public reporting burden for this collection of information is estimated to average 33 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Facilities licensed by the Nuclear Regulatory Commission.

Estimated number of respondents: 670.

Estimated total annual burden on respondents: 22,110.

Frequency of collection: one time.

Respondents: Facilities licensed by the Nuclear Regulatory Commission.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Dated: February 27, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-5258 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3911-7]

Acid Rain Advisory Committee; Open Meeting

SUMMARY: In August of 1990, the U.S. Environmental Protection Agency gave notice to the establishment of an Acid Raid Advisory Committee (ARAC) which would provide advice to the Agency on issues related to the development and implementation of the requirements of the Acid Deposition Control title of the Clean Air Act Amendments of 1990.

OPEN MEETING DATES AND ADDITIONAL INFORMATION: Notice is hereby given that the Acid Rain Advisory Committee will hold an open meeting from 9 a.m. to 5 p.m. on March 20, 21, and 22 at the Ramada Renaissance Hotel, Washington Dulles, 13869 Park Center Road, Herndon, VA 22071 (703) 478-2900. At its first meeting, ARAC established four subcommittees: Allowance Trading and Tracking, Permits and Technology, Emissions Monitoring, and Energy Conservation and Renewables. It is anticipated that on March 20 and for a half day on March 21, these subcommittees will meet to discuss and frame issues related to their areas of assignment. The subcommittee will meet concurrently in different rooms. Seating in those rooms will be limited and publicly available on a first come, first serve basis. It is anticipated that on the afternoon of March 21 and on March 22, the full committee will meet to hear presentations and engage in discussions on issues developed in the subcommittees.

INSPECTION OF COMMITTEE DOCUMENTS: All documents for this meeting, including a more detailed meeting agenda will be publicly available in limited numbers at the meeting. Thereafter, these documents together with related documents prepared for previous ARAC meetings will be available in the EPA Air Docket Number A-90-39 in room 1500 of EPA headquarters, 401 M Street SW., Washington, DC. Hours of inspection are 8:30 to 12 noon and 1:30 to 3:30 p.m., Monday through Friday.

DATES OF FUTURE ARAC MEETINGS: ARAC will hold its fifth meeting on April 29, 30, and May 1, 1991. This meeting will also be held at the Ramada Renaissance Hotel in Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Concerning ARAC or its activities, please contact Mr. Paul Horwitz, Designated Federal Official to the Committee at (202) 475-9400; fax, (202) 252-0892, or by mail at USEPA, Acid Rain Division (ANR 445), Office of Air and Radiation, Washington, DC 20460.

Dated: February 28, 1991.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation.

[FR Doc. 91-5257 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30315; FRL 3878-3]

TPTH: Deletion of Uses and Directions for Use on Carrots

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: This notice announces that Griffin Corporation, Hoechst Celanese, M T Chemicals Inc., and Wesley Industries Inc., the sole registrants of the technical active ingredient TPTH, have requested to amend their registrations of TPTH Technical products by deleting all uses and directions for use on carrots. Notice is hereby given of the intent of the Environmental Protection Agency to approve the proposed amendments. EPA is at this time soliciting comments on the proposed amendments.

DATES: Written comments must be submitted on or before April 5, 1991.

ADDRESSES: Send three copies of your written comments identified by the docket control number 30315, to: Public Docket and Freedom of Information Branch, Field Operations Division (H7504C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: By mail: Eric Feris, Special Review and Reregistration Division (H7508C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location: Reregistration Branch, Crystal Station 1, WF33G5, 2800 Crystal Drive, Arlington, Virginia. By telephone, call through the Federal Information Relay Service at 1-800-877-8339. When the operator answers, ask to call Eric Feris at (703) 308-8048.

SUPPLEMENTARY INFORMATION: TPTH is the commonly accepted name for triphenyltin hydroxide. It is a member of the organotin family and is also known as Fentin hydroxide and hydroxytriphenyltin. TPTH was first developed for agricultural use as a fungicide and miticide by the Thompson-Hayward Agriculture and Nutrition Co., since purchased by Uniroyal Inc. TPTH is available as a 96 percent active ingredient technical product for formulating TPTH end-use products. Technical TPTH is produced by Griffin Corporation, Hoechst Celanese, M T Chemicals, and Wesley Industries Inc. under the trade names TPTH Technical (96 percent), and Wesley Technical Triphenyltin Hydroxide (96 percent). TPTH is primarily used in the formulation of fungicide/miticide products for use on crop areas.

Griffin Corporation, Hoechst Celanese, M T Chemicals, and Wesley Industries, producers of the technical grade of the active ingredient TPTH have requested to amend their registrations of TPTH Technical and Wesley Technical Triphenyltin Hydroxide by deleting all uses and directions for use on carrots. EPA intends to approve the request. Since these are the sole registrants of the technical grade TPTH there will no longer be a manufacturing use product available from which to formulate any registered use products for TPTH on carrots. End-use registrants are being notified by certified mail that their generic data exemption will be revoked and they will be given the opportunity to generate data in support of this use. Should any registrant wish to put the use of carrots back on their TPTH label at a later date, the registrant must duly apply for a label amendment and the EPA must review the request and make a determination of the acceptability of the request based on the risks and benefits of such an amendment.

EPA is now soliciting comments on the proposed amendments. Interested persons are invited to submit their written comments to the address given above.

Dated: February 19, 1991.

Allan A. Abramson,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-4917 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44565; FRL 3881-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl ethyl ketoxime (MEKO) (CAS No. 96-29-7), submitted pursuant to a final test rule. Test data was also submitted on octamethylcyclotetrasiloxane (OMCTS) (CAS No. 556-57-2), pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for MEKO were submitted by the Industrial Health Foundation, Inc., pursuant to a test rule at 40 CFR 799.2700. They were received by EPA on February 5, 1991. The submissions describe a teratology study in rats and in rabbits. Developmental toxicity testing is required by this test rule. This chemical is sold primarily as a nonreactive antiskinning agent in alkyd surface coating and paints. It is also used as a blocking agent for isocyanates and siloxanes.

Test data for OMCTS were submitted by the Silicones Health Council on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on February 13, 1991. The submissions describe the determination of the biodegradability in a sediment/soil microbial system. Chemical fate testing is required by this consent order. This chemical is used primarily as an intermediate in the production of polydimethylsiloxane.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44565). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 22, 1991.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-5259 Filed 3-5-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL ELECTION COMMISSION

[Notice 1991-1]

Filing Dates for the Massachusetts Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Massachusetts has scheduled special elections on April 30, 1991, and June 4, 1991, in the First Congressional District to fill the seat of the late Silvio Conte.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report by April 18, 1991. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on June 4, 1991, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by May 23, 1991, and a Post-General Report by July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary Election and all other political committees not filing monthly which support candidates in the Special Primary shall file a 12-day Pre-Primary Report by April 18, 1991, with coverage dates from the last report filed through April 10, 1991. Committees, other than monthly filers, which are involved in only the Special Primary, must also file a Mid-year Report due July 31, 1991, with coverage dates from April 11, 1991, through June 30, 1991.

All principal campaign committees of candidates in the special general election and all other political committees not filing monthly which support candidates in this election shall file a 12-day Pre-General election report due on May 23, 1991, with coverage dates from April 11, 1991, through May 15, 1991, and a Post-General election report due on July 5, 1991, with coverage dates from May 16, 1991 through June 24, 1991. Such committees must also file a Mid-Year report due July 31, 1991, with coverage dates from June 25, 1991 through June 30, 1991.

CALENDAR OF REPORTING DATES FOR MASSACHUSETTS SPECIAL ELECTIONS

All committees involved in the Special Primary (4/30) must file:

Report	Period covered [1]	Reg./cert. mailing date [2]	Filing date
Pre-primary	1/1/91-4/10/91	4/15/91	4/18/91
Mid-year	4/11/91-6/30/91	7/31/91	7/31/91
All committees involved in the special primary (4/30) amd special general (6/4) must file:			
Pre-primary	1/1/91-4/10/91	4/15/91	4/18/91
Pre-general	4/11/91-5/15/91	5/20/91	5/23/91
Post-general	5/16/91-6/24/91	7/5/91	7/5/91
Mid-year	6/25/91-6/30/91	7/31/91	7/31/91

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: February 27, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91-5249 Filed 3-5-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

California

[FEMA-894-DR] Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-894-DR), dated February 11, 1991, and related determinations.

DATED: February 15, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of California, dated February 11, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 11, 1991:

The counties of Stanislaus Tehama for Disaster Unemployement Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency

[FR Doc. 91-5261 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-891-DR]

Indiana: Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA-891-DR), dated January 5, 1991, and related determinations.

DATED: February 22, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated January 5, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 5, 1991:

Lake County for Individual Assistance and Public Assistance; and Marshall County for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-5262 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-864-DR]

Hawaii: Disaster and Emergency Areas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is removing the time restriction imposed by the Individual and Family Grant (IFG) program for the Presidentially-declared disaster FEMA-864-DR-Hawaii. This action is necessary because the flow of lava from the Kilauea volcano continues. FEMA is extending indefinitely the time limit until the lava flow stops and to enable all grant award and administrative activities to be completed.

FOR FURTHER INFORMATION CONTACT: Sharon A. Hordesky, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 Telephone: 202-646-2778.

SUPPLEMENTARY INFORMATION: Notice is given of the decision of the Associate Director, State and Local Programs and Support Directorate, granting an indefinite extension of time for the IFG program, necessitated by the Kilauea lava flow in Hawaii. The incident period remains open, and the Kilauea lava flow continues to impact the declared disaster area and will endure for an indefinite period of time. Because of this, a determination has been made that sufficient reason exists to grant an indefinite extension to the State of Hawaii for the IFG program.

Dated: February 28, 1991.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-5263 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-02-M

Advisory Committee of the National Earthquake Hazards Reduction Program (NEHRP): Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.), announcement is made of the following committee meeting:

Name: National Earthquake Hazards Reduction Program (NEHRP) Advisory Committee.

Dates of Meeting: April 2—3, 1991.

Place: Marriott Suites, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

Time: April 2—9 a.m. to 5 p.m.; April 3—8 a.m. to 12 p.m.

Proposed Agenda: The Committee will be briefed on the National Earthquake Hazards Reduction Program Plan draft and will provide comment and input; the NEHRP Advisory Committee will discuss their own plan of work for addressing the major issues of NEHRP.

The meeting will be open to the public with approximately ten seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Deborah O'Rourke at 202-646-2803.

Minutes of the meeting will be prepared by the Committee and will be available for public viewing at the Federal Emergency Management Agency, Earthquakes and Natural Hazards Programs Division, 500 "C" Street, SW., room 625, Washington, DC. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 27, 1991.

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-5264 Filed 3-5-91; 8:45 am]

BILLING CODE: 6718-21-M

Board of Visitors for the National Fire Academy; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: April 21–22, 1991.

Place: National Association of State Fire Marshals (NASFM) Annual Conference, Marriott Hotel, 25 America's Cup, Newport, Rhode Island.

Time: April 21—9 a.m.–12 p.m. (Quarterly Meeting), 12 p.m.–1 p.m. (Field Survey meeting with NASFM Board of Directors), 1 p.m.–4 p.m. (Quarterly Meeting). April 22—9:45 a.m.–10 a.m. (Field Survey Meeting with NASFM Conference Participants), 10 a.m.–12 p.m. (Quarterly Meeting).

Proposed Agenda: Old Business, New Business, Field Survey Meeting.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before April 11, 1991.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Administrator's Office, U.S. Fire Administration, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 15, 1990.

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 91–5265 Filed 3–5–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, *et seq.*), as amended. Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

The Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law 101–595, section 710 ("1990 Amendments") were enacted on November 16, and became effective on February 14, 1991. The 1990 Amendments require, *inter alia,* that NVOCCs post a minimum bond of $50,000 with the Commission, and that every NVOCC not domiciled in the United States appoint a resident agent for service of process. The Commission issued an Interim Rule to implement the 1990 Amendments on January 15, 1991, which was scheduled to become effective on February 14, 1991. After receiving comments from all segments of the industry citing various difficulties in complying with the Interim Rule, the Commission granted a 60-day exemption from all requirements of the 1990 Amendments. The Commission also stayed the effective date of its Interim Rule until April 15, 1991.

OMB previously granted the Commission an emergency 90-day clearance of its Interim Rule through May 1, 1991. The Commission now is resubmitting its Interim Rule provisions for OMB clearance under 5 CFR 1320.13. Clearance is sought for various implementing provisions contained in 46 CFR Parts 580, 581, and new part 583 as follows:

46 CFR Part 580

Every NVOCC must state in its tariffs the surety bond number and identity of the surety company issuing the bond. NVOCCs not domiciled in the U.S. must also identify a resident agent. Every common carrier accepting or transporting cargo shall also ascertain the identity and status of the shipper. The Commission estimates an annual respondent universe of 5242 respondents. Total estimated respondent burden for this amendment is 2788 manhours: 1,581 manhours to designate an agent and furnish bonding information; and 1,207 manhours to identify shipper status. Total cost to the Federal Government is estimated at $17,632; total cost to respondents is estimated at $212,915.

46 CFR Part 581

Shipper contract parties must certify their shipper status and that of affiliates entitled to receive service under the contract. The Commission estimates a respondent universe of 100, which is comprised of 70 carriers and 30 conferences. Annual respondent burden is estimated at 221 manhours. There is no additional estimated annual cost to the Federal Government; estimated annual cost to respondents is $2,210.

46 CFR Part 583

Every NVOCC must file a surety bond with the Commission in the amount of $50,000. NVOCCs not domiciled in the U.S. must designate and maintain resident agents, and publish such designations in tariffs. The Commission estimates an annual respondent universe of 5242 respondents. Total estimated respondent burden for this amendment is 61,610 manhours: 52,369 manhours to file initial surety bonds; 7,533 manhours to designate resident agents and publish the information in tariffs; and 1,708 manhours to file replacement bonds and designate replacement agents. Total initial cost to the Federal Government is estimated at $69,945, with an estimated annual cost of $9,187 thereafter. Total initial cost to respondents is estimated at $1,855,201, with an estimated annual cost of $47,145 thereafter.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5180 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M

Puerto Rico Ports Authority/Seaboard Caribbean Terminal, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that

document to the person filing the agreement at the address shown below.

Agreement No: 224–003963–002.

Title: Puerto Rico Ports Authority/ Seaboard Caribbean Terminal, Inc. Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority Seaboard Caribbean Terminal, Inc.

Filing Party: Mrs. Mayra N. Cruz Alvarez, Contracts Supervisor, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, P.R. 00936–2829.

Synopsis: The Agreement amends the parties' basic agreement to renew its term for an additional 5-year period expiring April 15, 1995. The Agreement also increases: (1) The penalty fee from $737.90 to $966.38; (2) the monthly rent for exclusive use from $6,754.02 to $9,038.79; and (3) the security guarantee from $55,000 to $60,241.35.

By order of the Federal Maritime Commission.

Dated: March 1, 1991.

Joseph C. Polking,

[FR Doc. 91–5235 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M.

NYSA–ILA; Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on February 26, 1991, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 224–200063–008.

Title: NYSA–ILA Tonnage Assessment Agreement.

Parties: New York Shipping Association, Inc. International Longshoremen's Association, AFL–CIO.

Synopsis: The agreement amends the parties' basic agreement to provide for a reduction in the tonnage assessment paid by ocean carriers in the Port of New York and New Jersey, effective March 1, 1991.

By order of the Federal Maritime Commission.

Dated: March 1, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–5236 Filed 3–5–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

February 28, 1991.

BACKGROUND: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments on this proposed revision to information collection are welcome and should be submitted on or before April 5, 1991.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202–395–7340).

Request for OMB Approval to Revise the Following Report

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 002.

OMB Docket number: 7100–0032.

Frequency: Quarterly.

Reporters: U.S. branches and agencies of foreign banks.

Annual reporting hours: 43,500.

Estimated average hours per response: 18.75.

Number of respondents: 580.

Small businesses are not affected.

This information collection is mandatory (12 U.S.C. 3105(b)(2),1817(a)(1) and (3), and 3102(b)) and is given partial confidential treatment.

On a quarterly basis, all U.S. branches and agencies of foreign banks ("U.S. branches") are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy purposes. The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies.

Most of the proposed revisions would make the reporting requirements for U.S. branches equivalent to those for U.S. commercial banks in the Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036). The proposed changes to the FFIEC 002 for June 1991 affect several existing schedules and include the addition of a new schedule that is intended to improve the ability of the three federal bank regulatory agencies to monitor the involvement of U.S. branches in, and the credit quality of, highly-leveraged transactions (HLTs), both on an individual U.S. branch and aggregate basis. Information on the new schedule would receive confidential treatment.

Other changes are proposed for the deposit insurance assessments schedule (Schedule O), which is completed only by U.S. branches whose deposits are insured by the FDIC. Items would be added to collect data on accrued interest payable on deposits. The reporting frequency for items on the amount of deposits by size of deposit and on the number of deposit accounts of more than $100,000 would be changed from annually to quarterly. In addition, a new item on the number of deposit accounts of $100,000 or less would begin to be collected annually as of June 30. These changes would increase the estimate of hours per response for the 55 insured U.S. branches by an average of thirty minutes.

A new section (Part V) would be added to the schedule for transactions with related institutions (Schedule M) to collect information on off-balance sheet transactions between the reporting U.S. branch and other related depository institutions, such as the head office of the foreign bank or other branches of the foreign bank. Similar to the treatment of information in the other four parts of Schedule M, information on this new section would receive confidential treatment.

Each of two items on the schedule for commitments and contingencies (Schedule L) has two subitems in which reporting U.S. branches are required to provide information separately on gross commitments or obligations to purchase and sell particular types of contracts. Deletion of the four subitems is proposed.

Board of Governors of the Federal Reserve System, February 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5203 Filed 3-5-91; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service: Federal Telecommunications Standards

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED-STD). FED-STD 1016, "Telecommunications: Analog to Digital Conversion of Radio Voice by 4,800 Bit/second Code Excited Linear Prediction (CELP)" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, Office of Technology and Standards, National Communications System, telephone (703) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On September 22, 1989, a notice was published in the **Federal Register** (54 FR 39066) that a proposed Federal Telecommunications Standard 1016 entitled "Telecommunications: Analog to Digital Conversion of Radio Voice by 4,800 Bit/second Code Excited Linear Prediction (CELP)" was being proposed for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), room 6039, 7th and D Streets, SW., Washington, DC 20407; telephone (202) 708-9205.

Dated: February 14, 1991.

Thomas J. Buckholtz,

Commissioner, Information, Resources Management Service.

[FR Doc. 91-5241 Filed 3-5-91; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0201]

Rin 0905-AA06

Print Size and Style of Labeling for Over-the-Counter Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on a citizen petition filed by Pharmacists Planning Service, Inc., requesting regulatory standards for the print (optimum size and style) of over-the-counter (OTC) drug product labeling in order to maximize readability and legibility for persons with impaired or deteriorating vision.

DATES: Comments by June 4, 1991.

ADDRESSES: Submit written requests for single copies of the citizen petition to the Division of Over-the-Counter Drug Evaluation (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on print size and style of labeling for OTC drug products to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: The Pharmacists Planning Service, Inc. (the petitioner), 200 Gate Five Rd., Sausalito, CA 94966, has petitioned FDA under the provisions of § 10.30 Citizen petition (21 CFR 10.30) to establish regulatory standards for the print (optimum size and style) of OTC drug product labeling to maximize readability and legibility.

I. Summary of Petitioner's Views

The following narrative summarizes the information and arguments presented by the petitioner in support of its proposal. The material included in the narrative does not necessarily represent the views of the agency.

The petitioner stated that there is a need to institute larger print size on the packaging of OTC drug products, and to establish standards for the optimum size and style of print to be used for the labels and other printed material packaged with OTC drug products. These standards are needed in order to maximize readability of the print for persons with deteriorating vision, and because most people (especially the elderly) are unable to read the small print that currently appears on some OTC drug product labeling.

The petitioner stated that its request was being made pursuant to California Assembly Bill (AB) 2713 for the following reasons:

(1) Medication misuse and abuse is a serious and costly problem to patients, health providers, health care insurance plans, and local, State, and Federal governments.

(2) Prescription drugs continue to be switched to OTC status along with their attendant side effects and cautions on use.

(3) OTC drugs are marketed in containers of all shapes and sizes, and the labeling bears instructions, cautions, and side effects associated with their use.

(4) Most people, particularly the elderly, are unable to read the small print, and vital information is buried with other information that is required by FDA.

The petitioner also stated that the need for this type of additional regulation to safeguard the health, welfare, and safety of the public has been documented, and that "more than 240,000 older adults were hospitalized due to adverse drug reactions, mixing OTC drugs, which are available through sources other than a qualified health professional, and through lack of medical/pharmaceutical information on the proper method of administration of these medications." The petitioner also argued that there is no economic impact involved with its citizen petition, but that there would be a "$10 billion" savings in hospital costs. (Note: The petitioner provided a copy of the original California bill AB 2713;

however, there is a more current amended version (Ref. 1) that was enacted on September 12, 1990.)

II. Current Regulatory Policy

Currently, there are no statutory or regulatory requirements that specifically address the print size and style of the labeling of OTC drug products. Section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) states that

> A drug * * * shall be deemed to be misbranded * * * (c) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs * * * in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Implementing regulations in 21 CFR 201.15, which address the prominence of required label statements for drugs, describe a number of situations in which information on a drug product's label may lack the prominence and conspicuousness required by section 502(c) of the act. Paragraph (a)(6) of § 201.15 identifies the following reasons: "Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed, or graphic matter." However, no further requirements appear as to the size or style of type that is to be used.

Other agency regulations discuss various print size and style requirements. For example, the statement of identity of an OTC drug product is required to be presented in boldface type on the principal display panel, in a size reasonably related to the most prominent printed matter on such panel, and in lines generally parallel to the base on which the package rests as it is designed to be displayed. (See 21 CFR 201.61(c).) In some instances, the agency has required that warnings for certain OTC drug products appear in boldface type. For example, certain warnings for OTC bronchodilator drug products in 21 CFR 341.76(c)(6)(i) and (c)(6)(ii) are required to appear in boldface type. However, none of the existing regulations specifically address print size or style that is to be used.

III. Consumer Complaints; Professional Views

Based on a syndicated article that appeared in a newspaper column entitled "Peop'e's Pharmacy" (Refs. 2 and 3), a number of consumers (Ref. 4) wrote to FDA recently and complained about the readability of OTC drug product labeling. Many individuals complained about the small print size, and some were concerned about the style and color contrast. Several consumers specifically mentioned problems with reading the small print of OTC ophthalmic drug products. Questions were also raised about the safety of small print size because poor label legibility may result in adverse drug reactions due to improper dosing. Several consumers claimed they had such an experience. Many people complained that even though with corrective lenses they have "20/20 vision" they still need a magnifying glass to read the labels. Comments about print size have been received by the agency in a number of OTC drug rulemakings (e.g., OTC skin protectant drug products (February 15, 1983; 48 FR 6820 at 6830); OTC ophthalmic drug products (March 4, 1988; 53 FR 7076 at 7079)). A professional pharmaceutical group has recognized that the visually impaired, including many elderly persons, may have trouble reading medication labels, especially on smaller packages. This group has recommended Federal legislation similar to California AB 2713 to increase the optimum size and style of print to improve the readability of OTC drug labels (Ref. 5).

IV. California Legislation

On September 12, 1990, the Governor of the State of California signed AB 2713 to amend the Health and Safety Code regarding the labeling of nonprescription drug products (Ref. 1). Section 1 of the bill states that printed materials on labels and notices packaged with nonprescription drugs may be difficult to read, presenting a potential danger to the health and safety of customers. Therefore, every effort should be made to print these materials in a manner which makes them more comprehensible. Section 2 of the bill adds the following to the State's Health and Safety Code: (1) Manufacturers of nonprescription drugs which are sold in the State of California shall evaluate and may modify the labeling of nonprescription drugs to maximize the readability and clarity of label information, in both the cognitive and visual sense; (2) the Nonprescription Drug Manufacturers Association (NDMA) shall report on a quarterly basis to, and seek advice periodically from, the California State Department of Health Services, consumer groups, health professionals, and drug manufacturers regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information; and (3) the director of the California State Department of Health Services, shall report to the legislature on or before December 3, 1993, regarding the progress made by the nonprescription drug industry with respect to the readability and clarity of labeling information. The bill further states that these provisions shall be repealed as of January 1, 1994.

V. Nonprescription Drug Manufacturers Association Action

FDA is aware that NDMA has endorsed the California legislation, and, in recognition of label reading difficulties, has appointed a task force on labeling to: (1) Explore the many aspects of label readability and legibility, and (2) evaluate the need and opportunity to make labels more easily read and understood by the public (Ref. 6). The task force is responsible for making recommendations to the NDMA Board and Association members on options to achieve such labeling, including type-size, print, style, color, contrast, package inserts, and special larger size packages. NDMA has also issued guidelines for industry entitled "Points for Consideration in Examining Product Labels for Readability and Legibility," (Ref. 7). These guidelines have been mailed to all NDMA member companies asking that they review their product line against six criteria to see if improvements can be made in the legibility of product labeling. The six criteria are as follows:

1. *General legibility.* Read your own labels. Examine the presentation of your labeling information as would a consumer. Is it readable?

2. *Utilization of available space.* In some cases it may be possible to enlarge label type size by extending the copy into some of the existing "white space." Examine the location and placement of information. Review alternative approaches to maximizing available space allocation, including placement of directions, instructions, warnings, and precautions on more than one panel of exterior carton.

3. *Contrast and color.* Review not only the size and placement of information, but also review the utilization of color and contrast to emphasize and draw attention to labeling information. Highly contrasting copy/background colors are more legible than low contrast colors. Dark type on a light background is more legible than light-on-dark. The smaller the type, the greater the contrast should be. Consumers of all ages are more apt to read and understand label information presented in a sharp contrast.

4. *Style of print.* Examine possible variations in style of type and graphic presentation. Upper and lower case type is easier to read than all capitals. Plain block print is more legible than fancy type. Allow space between paragraphs and words. Indent, bold, and highlight information such that it will grab the attention of the consumer and focus attention on label information.

5. *Quality of print.* Size of type is not everything. The quality (sharpness) of print has a great effect on legibility. Different printing methods differ in quality, e.g., letterpress printing is usually sharper than offset. Thinner (less bold) type may appear sharper than bolder type.

6. *Package innovation possibilities.* Creative packaging can provide more space for information, allowing more flexibility in presentation of information. Think of ways that would assist a consumer in reading and understanding label information.

VI. Request for Comments

The petitioner, consumers, professional group, NDMA, and California legislation discussed above raise issues that need to be addressed before FDA can make a final decision on the feasibility of establishing a Federal regulation pertaining to print size and style of OTC drug labeling. In the past, FDA has encouraged manufacturers to include a statement on the product container label, carton, or package insert suggesting that the consumer retain the carton or package insert for complete information about the use of the product when all the required labeling does not appear on the product container label. Manufacturers are free to design ways of incorporating such labeling, e.g., by using flap, wrap-around, or fold-over labels or by redesigning cartons or containers to provide more label space with room for larger and more legible print. In an effort to determine whether further steps need to be taken and whether a consensus can be reached on the most practical manner of providing for OTC drug labeling that is easy to read, FDA is seeking public comments on the feasibility of establishing Federal regulations that deal with the print size and style of OTC drug labeling. FDA also intends to consider the recommendations of NDMA's task force. In addition, FDA is seeking public comments on whether any new labeling requirements would have a substantial economic impact because of the large number of manufacturers who might incur additional labeling expense. Therefore, in accordance with § 10.30(h)(3) (21 CFR 10.30(h)(3)), FDA is seeking public comments on the following questions before reaching any decision on the petition:

1. Are current print sizes, types, colors, contrasts, backgrounds, etc. of OTC drug labeling adequate in providing readable information for individuals with normal eyesight and for those with poor or deteriorating eyesight?

2. Should there be a mandatory minimum print size or other readability standard and, if so, what should it be? If the answer is yes, should this be established via a regulation or a guideline?

3. Should a package insert or larger carton be mandatory if a minimum print size standard is implemented, and because of package size, the manufacturer is unable to meet the specifications?

4. What impact would a Federal legibility/readability regulation have on State laws that relate to "slack-fill"?

5. What relevant data are available and what studies have been performed to determine optimum print size, background, contrast, etc. for package products?

6. What adverse effects have been documented that are associated with the inability or failure to read labels on OTC drug products?

7. Will the NDMA guidelines be effective and have a positive impact on labeling and, if so, are these guidelines adequate so that a Federal regulation or guideline is not needed?

The complete petition is on public display between 9 a.m. and 4 p.m., Monday through Friday, in the Dockets Management Branch. Requests for single copies of the petition may be submitted to the Division of OTC Drug Evaluation (address above).

Interested persons may, on or before June 4, 1991, submit to the Dockets Management Branch (HFA-305) (address above) written comments regarding this petition. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. The petition, other information discussed above, and any comments received in response to this request for comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

If, after reviewing the comments and other information available, FDA concludes that the petition has sufficient merit, the agency will propose regulations or a guideline accordingly.

VII. References

(1) Assembly Bill (AB) 2713 State of California, in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

(2) Copy of newspaper article from the "People's Pharmacy," King Features Syndicate, in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to J. and T. Graedon, the "People's Pharmacy," in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

(4) Letters from consumers to FDA, in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

(5) Comment No. C1, Docket No. 90P-0201, Dockets Management Branch.

(6) News release, Nonprescription Drug Manufacturers Association, Washington, July 23, 1990, in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

(7) Letter from J. D. Cope, Nonprescription Drug Manufacturers Association, to W. E. Gilbertson, FDA, enclosing Nonprescription Drug Manufacturers Association's "Points for Consideration in Examining Product Labels for Readability and Legibility," in OTC Vol. 24, Docket No. 90P-0201, Dockets Management Branch.

Dated: February 25, 1991.

David A. Kessler,

Commissioner of Food and Drugs

[FR Doc. 91-5232 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92-463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Council on Graduate Medical Education

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, HHS North Building, Room G-619, 330 Independence Avenue, SW., Washington, DC, telephone (202) 619-0791. Copies may be obtained from: Carol S. Gleich, Ph.D. Executive Secretary, Council on Graduate Medical

Education, Health Resources and Services Administration, room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-6190

Dated: March 1, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91-5301 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-15-M

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) and the National Highway Traffic Safety Administration (NHTSA) announce Fiscal Year (FY) 1991 funds are available for grants under section 1910 of the Public Health Service (PHS) Act. These grants will be made to States or accredited schools of medicine to support demonstration projects for the expansion and improvement of emergency medical services (EMS) for children. Funds appropriated by Public Law 101-517 will be used for this purpose.

The NHTSA has participated with the HRSA in developing the program priorities announced under the EMS for children program for FY 1991. The NHTSA will also share the Federal monitoring responsibilities for EMS for children awards made during FY 1991 as well as continuing to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s).

DATES: To receive consideration, grant applications for the EMS for children should be submitted to the Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, 12300 Twinbrook Parkway, Rockville, Maryland 20852.

These applications must be received or postmarked on or before April 18, 1991. Applications will be considered as meeting this deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the review group.

A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the Director, Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, room 9-31, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443-2250.

Grant applications (PHS form 5161-1, approved under OMB #0937-0189) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be obtained from: Grants Management Officer, Maternal and Child Health Bureau, Health Resources and Services Administration, 13200 Twinbrook Parkway, suite 100-A, Rockville, Maryland 20852, telephone 301 443-1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (section 1910 of the PHS Act, as amended), establishes a program of grants to States and accredited medical schools for demonstration projects for the expansion and improvement of EMS for children who need treatment for critical illnesses and injuries. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" for purposes of this program is defined as having the same meaning as set forth in section 701(4) of the PHS Act (42 U.S.C. 292a(4)). "Accredited" in this context has the same meaning as set forth in section 701(5) of the PHS Act (42 U.S.C. 292a(5)).

It is the intent of this grant program to stimulate the initiation or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award demonstration grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of EMS funds allotted to the State under the Preventive Health Services Block Grant.

There will be three topical areas of competition this year:

1. Implementation grants for the purpose of initiating or improving the capacity of a State's Emergency Medical Services program to address the particular needs of children. Budget requests for these grants should not exceed $250,000 per year. Up to five projects will be awarded.

2. Resource grant(s) to develop a means of gathering, reproducing, publicizing and distributing work products of the various grantees of the EMSC program; providing an information, consultation and technical assistance resource to States and localities to improve their EMSC capacity; and acting as a repository for data and other programmatic information. Between one and three projects will be funded. The total budget for this priority (grant or grants) should not exceed $400,000 per year.

3. Targeted issues grants on topics of importance to EMSC. These grants are intended to address specific, focused issues related to the development of an EMSC capacity including targeted systems development, evaluation, education and data collection activities. Particular attention will be given to projects addressing minority concerns. Budget requests for this activity should range between $50,000 and $125,000 per year. Up to five projects will be funded.

Under topical area 1, States (and medical schools within those States) which have not as yet received support under this program will have priority for funding. Under topical area 3, States (and medical schools within those States) which have received support under this program will have priority for funding.

These topical areas are not being proposed for public comment. A national conference of past and current EMSC grantee States (total of 20) and other recognized leaders in the EMSC field was held in Washington, DC, during November 1990. This select group of representatives was informed of the changes in the reauthorization bill for this program that had recently passed which effectively expanded the program to allow for additional types of program activities. It was from this audience that the priorities, as identified in this notice, were offered and agreed upon as the

direction the EMSC program should take during FY 1991. Thus, the priorities as listed in this notice already represent substantial public input from those most involved with this issue.

By statute, the project period for EMS for Children grants is for up to two years, subject to annual evaluation by the Secretary.

Availability of Funds

Approximately $4,880,000 is available for grants for the EMS for Children program, of which $2,250,000 will be used for new and competing grants. We estimate funding approximately 10–15 new and competing grants. The remaining funds will be used for continuation support.

Eligible Applicants

Applications for funding under section 1910 will be accepted from States and accredited schools of medicine. Applicants are encouraged to seek the participation and support of interested entities within the State, such as local government and health and medical organizations in the private sector, in developing the proposed demonstration project. Consistent with the statutory purpose of improving maternal and child health and with particular attention to the needs of minority and disadvantaged populations, the Department will review applications for funds under the above mentioned categories as competing applications and will fund those which, in the Department's view, best address applicable Healthy People 2000 objectives and otherwise promote improvements in health.

Application Evaluation Criteria

An application will be evaluated by consideration of the following factors:

1. The adequacy of the applicant's description of the problem of pediatric trauma and critical illness in grant locale. The adequacy of sections of the application devoted to the special problems of (a) handicapped children and families; and (b) minority children and families (including Native Americans).

2. The appropriateness of project outcome objectives in relation to the specific nature of the problems identified by the applicant.

3. The soundness (in relation to the state of the art), appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.

4. The soundness of the plan for evaluating progress in achieving project outcome objectives.

5. The extent of collaboration and coordination with other appropriate organizations involved in EMS, health care, and public health and safety (e.g., injury prevention activities, the State EMS agency, the State Maternal and Child Health program, highway safety, rehabilitation programs) and the degree of involvement of the "community" (e.g., private sector, voluntary organizations).

6. The soundness of the proposal, as set forth in the application, in terms of fiscal management, effective use of personnel, and ability to complete the proposal within the grant period.

7. The extent to which the applicant proposes to employ products and expertise of EMS for Children programs in other States, especially of current and former grantees of the Federal EMSC program. Such resources include, but are not limited to, technical assistance and consultation.

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 92.22.

The five separate sets of cost principles prescribed for grant recipients are: (1) OMB Circular A–87 for State and local governments; (2) OMB Circular A–21 for institutions of higher education; (3) 45 CFR part 74, appendix E for hospitals; (4) OMB Circular A–122 for nonprofit organizations; and (5) 48 CFR chapter 1, subpart 31.2 for for-profit (commercial) organizations.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J—Monitoring and Reporting of Program Performance, and § 92.40 which applies to State and local governments.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicant (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number is 93.127.

Dated: February 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91–5230 Filed 3–5–91; 8:45 am]

BILLING CODE 4160–17–M

Program Announcement for Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1992 will be accepted for grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, presently authorized by section 827, title VIII of the Public Health Service (PHS) Act, as amended by Public Law 100–607. This authority will expire on September 30, 1991. This program announcement is subject to reauthorization of this legislative authority and the authorization of appropriation. The issuance of this announcement is a contingency action to ensure that should funds become available, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year.

The President's budget request includes $4.1 million for this program in Fiscal Year 1992. Approximately $2.5 million is needed for 17 continuation projects which have been previously recommended for funding. With the remaining $1.6 million, approximately 11 competing projects will be awarded averaging $150,000 each. The period of

Federal support should not exceed three years.

Section 827 of the Public Health Service Act authorizes grants to increase opportunities for individuals from disadvantaged backgrounds to pursue a nursing education.

Grants may be awarded to eligible applicants to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds:

1. By identifying, recruiting and selecting such individuals;
2. By facilitating the entry of such individuals into schools of nursing;
3. By providing counseling or other services designed to assist such individuals to complete successfully their nursing education;
4. By providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education;
5. By paying such stipends as the Secretary may determine for such individuals for any period of nursing education;
6. By publicizing especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools; and
7. By providing training, information or advice to the faculty of such schools with the respect to encouraging such individuals to complete the programs of nursing education with which the individuals are enrolled.

Public and nonprofit private schools of nursing and other public or nonprofit private entities are eligible for grant support.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000: (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Public Health Service supported education programs and service programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

These criteria were established in fiscal year 1990 after public comment.

In addition, the following mechanism may be applied in determining the funding of approved applications.

Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

The following funding priority established in FY 1990, after public comment, is being extended in FY 1992.

Funding Priority for Fiscal Year 1992

In determining the order of funding of approved applications a funding priority will be given to:

Applications from nursing schools that have a minority and low-income student enrollment of 35 percent or more, or can document a 20 percent annual increase in the number of minority and low income students matriculating into the nursing major for the past three years.

Requests for grant application materials and questions regarding business management issues and grants policy should be directed to: Grants Management Officer (D-19), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-26, Rockville, Maryland 20857, Telephone: (301) 443-6915.

Applications materials should also be mailed to the Grants Management Officer at the above address.

Should additional programmatic information be required, please contact: Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 5C-13, Rockville, Maryland 20857, Telephone: (301) 443-5763.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915-0060.

The application deadline dates for FY 1992 are May 15, 1991 and October 1, 1991. Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or
2. *Postmarked* on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.178 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: February 28, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-5231 Filed 3-5-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-91-945; FR-2901-D-01]

Delegation of Concurrent Authority to the Deputy Secretary

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Concurrent Authority.

SUMMARY: Pursuant to Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the

Secretary of Housing and Urban Development is delegating to Deputy Secretary Alfred DelliBovi, concurrently with the Secretary, the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development with the exception of the power to sue and be sued.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Jacobson, Executive Assistant to the Deputy Secretary, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10100, Washington, DC 20410. Telephone (202) 708–0759 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate, and may authorize successive redelegations of such functions, powers and duties as determined to be necessary or appropriate. In the delegation of authority issued today, the Secretary is delegating to Deputy Secretary Alfred DelliBovi all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development, with the exception of the power to sue and be sued.

Accordingly, the Secretary delegates as follows:

Section A. Authority delegated.

Deputy Secretary Alfred DelliBovi is hereby authorized, concurrently with the Secretary, to exercise all the power and authority vested in or delegated or assigned to the Secretary of Housing and Urban Development.

Section B. Authority excepted. There is excerpted from the authority delegated under Section A the authority to sue and be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 26, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91–5275 Filed 3–5–91; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050–4410–04]

Advisory Council Meeting

AGENCY: Bureau of Land Management.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94–579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Garberville, California, March 20–22, 1991. Agenda items will include an orientation for new members, a tour of the King Range National Conservation Area, election of officers, conservation awards, and the Sacramento River Management Area. A complete agenda is available from the Ukiah BLM Office.

DATES: March 20, 2 p.m. to 5 p.m.; March 21, 8 a.m. to 5 p.m.; and March 22, 8 a.m. to 12 p.m.

ADDRESSES: March 20 and 22, Benbow Valley Restaurant, 6840 Benbow Drive, Garberville, California. March 21, Field Tour, King Range National Conservation Area.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10 a.m., Friday, March 22. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: February 22, 1991.

David Fatch,

Acting District Manager.

[FR Doc. 91–5181 Filed 3–5–91; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703) 875–1573, MS/AS/ISS, room 1209B, SA–14, Washington, DC 20523–1413.

Date Submitted: February 26, 1991.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0514.

Form Number: None.

Type of Submission: Extension.

Title: Rules and Procedures Applicable to Commodity Transactions.

Purpose: A.I.D. finances transactions under Commodity Import Programs and needs to assure that the transaction complies with applicable statutory and regulatory requirements. In order to assure compliance and request refund when appropriate, information is required from host country importers, suppliers receiving A.I.D. funds, and banks making payments for A.I.D.

Annual Reporting Burden

Respondents: 510; annual responses: 2.5; average hours per response: .50; burden hours: 637.50.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 1991.

Elizabeth Baltimore,

Information Support, Services Division.

[FR Doc. 91–5239 Filed 3–5–91; 8:45 am]

BILLING CODE 6116-01-M

Housing Guaranty Program; Notice of Investment Opportunity

The Government of Israel wishes to select managing underwriters for the structuring and sale of U.S. Agency for International Development (A.I.D.) guaranteed loans, or securities representing interests therein, made under A.I.D.'s Housing Guaranty Program. These funds will be used to finance projects for housing and infrastructure in Israel for Soviet refugees. Public Law 101–302 authorizes a $400 million program specifically for the Government of Israel.

The Government of Israel would like to receive proposals from interested underwriters on an expedited basis. Any

questions should be addressed to Israel's financial advisor, Kidder, Peabody, by calling Harriet Fried at (212) 510–3449 or Steve Plust at (212) 510–3294.

To accomplish Israel's objectives, Israel's lead manager must at a minimum:

1. Perform and discuss with Israel and it financial advisor a complete quantitative analysis of the cash flows generated by the proposed structures and proposed pricing of securities;

2. Obtain any credit ratings applicable to the proposed sale transaction;

3. Complete the underwriting of all securities offered for sale on a negotiated basis;

4. Establish and maintain a post-sale trading market for the securities;

5. Coordinate all activities relating to the proposed financing plan with Israel and its financial advisor; and

6. Assist Israel in securing the services of required service providers such as trustee, accountant, printer, etc.

Selection of underwriters and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2, Washington, DC 20523–0214, telephone: 202/663–2530.

Dated: February 27, 1991.

Michael G. Kitay,

Assistant General Counsel, Bureau for Asia and Private Enterprise, Agency for International Development.

[FR Doc. 91–5242 Filed 3–5–91; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–322]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Pall Corporation (Pall); Enka AG and Enka America, Inc.; Meissner Filtration Products Co., Inc., and Meissner Manufacturing Co., Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 25, 1991.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW. Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

Issued: February 25, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–5251 Filed 3–5–91; 8:45 am]

BILLING CODE 7020–02–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a one-day meeting of the Advisory Committee on Appellate Rules to consider proposed amendments to the Federal Rules of Appellate Procedure. The meeting will be open to public observation.

DATES: April 17, 1991—9a.m.

ADDRESSES: Administrative Office of the United States Courts, 811 Vermont Avenue, NW., room 638, Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC, 20544, telephone: (202) 633–6021.

Dated: February 27, 1991.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 91–5193 Filed 3–5–91; 8:45 am]

BILLING CODE 2210–01–M

NATIONAL SCIENCE FOUNDATION

Meeting To Comment on Second Biennial Revision of the U.S. Arctic Research Plan

In accordance with the Arctic Research and Policy Act of 1984, Public Law 98–373, the National Science

Foundation announces the following meeting:

Name of meeting: Second Biennial Revision of the U.S. Arctic Research Plan—Opportunity to Comment.

Date of meeting: March 21, 1991 1 p.m. to 4 p.m.

Place Anchorage Museum of History and Art, 121 West 7th Avenue, Anchorage, Alaska.

Purpose of meeting: Section 109(a) of the Arctic Research and Policy Act requires a biennial revision of the Plan (due in July 1991). Section 109(a) of the Act further requires the Interagency Arctic Research Policy Committee to consult with a number of groups during development of the Plan. The Interagency Committee and its staff and working groups have prepared a draft revision to the Plan, which will be available for review in the following locations in Alaska from March 13–29, 1991.

Anchorage, Alaska: The Alaska Resource Library, Federal Building, 222 W. 7th St., 1st Floor;

Juneau, Alaska: The Alaska State Library, State Office Building, entrance on 4th Street, Circulation Desk, 8th Floor;

Fairbanks, Alaska: The Rasmusen Library, University of Alaska, Fairbanks, Reserve Desk.

Representatives of the groups named in section 109(a) of the Act (Arctic Research Commission, Governor of Alaska, residents of the Arctic, the private sector and public interest groups) as well as members of the general public, are invited to obtain a copy of the draft revision for review, and to bring any comments they may have to the meeting. Staff of the Interagency Committee will be present to receive comments and answer questions.

The biennial revision to the Arctic Research Plan is organized to address research needs in the following areas:

1. Arctic Oceans and Marginal Seas;
2. Atmosphere and Climate;
3. Land and Offshore Resources;
4. Land-Atomosphere Interactions;
5. Engineering and Technology; and
6. Social Science and Health.

Coordinated interagency efforts and supporting programs are also discussed. These include research in the western Arctic marine environments, geodynamics, and cultural and natural characteristics of the Bering region, monitoring, data and information, activities, logistics, and international activities.

Public participation: This meeting is open to the public. Comments from representatives of groups named in the Arctic Research and Policy Act are encouraged. Written comments should be submitted at the public hearing or mailed to the address below by March 29, 1991.

For further information: If you would like to review a copy of the biennial revision, but are unable to visit one of the above locations, please write to the following address: Arctic Research Staff, National Science Foundation, 1800 G Street, NW., room 620, Washington, DC 20550, or call (202) 357–7817.

Information will be available after March 13, 1991

Costs: None.

Prior to the Public Meeting a workshop will be held on Federal Arctic Research Information, March 19–21, at the Anchorage Museum of History and Art, Anchorage, Alaska.

Charles E. Myers,

Arctic Staff, Division of Polar Programs.

[FR Doc. 91–5253 Filed 3–5–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-305]

Wisconsin Public Service Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission is considering issuance of an amendment to Facility Operating License No. DPR–43, issued to Wisconsin Public Service Corporation (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would allow the licensee to increase the allowable fuel enrichment at the Kewaunee Nuclear Power Plant from the current limit of 38.5 grams of Uranium-235 per axial centimeter of fuel assembly (or 3.67 as-built weight percent) to 49.2 grams of Uranium-235 per axial centimeter (or 4.75 as-built weight percent). The proposed amendment would allow the reload of the higher enrichment fuel assemblies and the storage of such assemblies prior to and subsequent to loading in the reactor. Plant operation using the higher enriched fuel must be demonstrated to be acceptable by a cycle-specific reload safety evaluation performed prior to each fuel loading.

The proposed action is in accordance with the licensee's application for amendment dated July 5, 1990 as revised July 10, 1990.

The Need for the Proposed Action

The licensee intends to increase the fuel enrichment for the Kewaunee Nuclear Power Plant to 49.2 grams of Uranium-235 per axial centimeter of fuel assembly. This enrichment increase is necessary to obtain fuel management flexibility necessary to effectively implement the reactor vessel flux reduction program. The flux reduction program, which was developed in response to the pressurized thermal shock rule, 10 CFR 50.61, will extend the useful life of the Kewaunee reactor vessel and facilitate potential life extension and license renewal efforts. Other benefits from higher fuel enrichments include deferral of the depletion of on-site spent fuel storage capacity and reduced fuel costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs. The proposed amendment would allow the reload and storage of enriched fuel of 4.75 w/o U–235. Plant operation using the higher enrichment fuel assemblies would be demonstrated to be acceptable by a cycle-specific reload safety evaluation performed prior to each fuel reloading. The use of fuel with a maximum enrichment of 4.75 w/o U–235 would not significantly increase the probability or consequences of any accidents previously analyzed. No significant changes in the types or amounts of radiological effluents during normal operation or postulated accidents that may be released offsite are incurred by the increased w/o fuel enrichment. As a result, no significant increase or cumulative occupational radiation exposure is noted.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit 1: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to this proposed amendment for the Kewaunee Nuclear Power Plant.

Therefore, since the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure, the Commission concludes that this proposed action

would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined by 10 CFR part 20. The proposed change will not result in a measurable change to the nonradiological plant effluents and therefore will not have any environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment Proposed No Significant Hazards Consideration and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 22, 1990 (55 FR 34385). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Kewaunee Nuclear Power Plant dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 5, 1990, and revision dated July 10, 1990 which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 28th day of February 1991.

Dominic C. Di Ianni,

Acting Director, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5248 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 29th meeting on March 20-22, 1991 room P-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. each day. The entire meeting will be open to the public.

The purpose of the meeting will be to review and discuss the following topics:

A. Review and comment on an NRC staff Technical Position regarding Regulatory Considerations in the Design and Construction of the Exploratory Shaft Facility.

B. Review and comment on the NRC staff's Interim Criteria for Decommissioning.

C. Meeting with the low-level waste coordinator from Massachusetts to hear about the development of the state's strategic plan for LLW disposal.

D. Meeting with the Commissioners to discuss items of mutual interest.

E. Response to a recent Staff Requirements Memorandum related to revising 10 CFR part 61 relative to attention to leaching resistance of the low-level waste form.

F. Briefing on NRC oversight and monitoring of existing low-level waste disposal facilities through the Agreement State program.

G. Briefing by Louisiana Energy Systems on their private uranium enrichment facility plans. Topics of interest include the disposal of the depleted uranium and the licensing process for the facility.

H. The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. The members will also discuss matters and specific issues which were not completed during previous meetings at time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: February 28, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-5245 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittees on Thermal Hydraulic Phenomena and Severe Accidents; Meeting

The Subcommittees on Thermal Hydraulic Phenomena and Severe Accidents will hold a joint meeting on March 21, 1991, in the Montgomery Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Thursday, March 21, 1991—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the issue of NRC computer codes and their documentation.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by

members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: February 28, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-5246 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 8, 1991 through February 22, 1991. The last biweekly notice was published on February 20, 1991 (56 FR 6867).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the

petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: February 6, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to (1) delete the reference to a specific date for 10 CFR Part 50, Appendix J, Section 4.7.A.2.a, (2) delete Table 3.7-1, "Primary Containment and Reactor Vessel Isolation Valves," and the references thereto, (3) clarify sections 4.7.A.2.b.1.a and 4.7.A.2.b.l.b by adding the words "primary containment."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change deleting the specific date of 10CFR50 Appendix J does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change is administrative in nature. It allows Primary Containment Testing to be performed in accordance with the current revision of 10CFR50 Appendix J. This change does not affect plant operation or design.

The proposed removal of Technical Specification Table 3.7-1 "Primary Containment and Reactor Isolation Valves" does not involve a significant increase in the probability or consequences of an accident previously analyzed. Relocating the table's information to other controlled documents does not affect the probability or consequences of any previously analyzed accident because no hardware changes are being proposed, and because isolation valve operability and surveillance requirements are not relaxed.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety because Primary Containment Testing will continue to be conducted in accordance with the latest version of 10CFR Appendix J.

Removing Table 3.7-1 from the Technical Specifications does not involve a significant reduction in a margin of safety because operability and surveillance criteria for valves needed for containment integrity are not being relaxed.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02199

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Acting Project Director: Susan F. Shankman

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: February 6, 1991

Description of amendment request: The proposed amendment would establish a revised basis for the safety analyses of the Pilgrim Nuclear Power Station based upon the results of the Loss-of-Coolant Accident (LOCA) analysis performed using General Electric's SAFER/GESTR-LOCA Application methodology. The proposed modification substitutes the reference to the LOCA analyses report in T.S.6.9.A.4.b with the revised LOCA analyses report.

The cycle 9 reload fuel (General Electric fuel, GE8) was analyzed using the SAFER/GESTR-LOCA Application Methodology. The approval of the proposed Technical Specifications is required for plant operation with cycle 9 reload fuel following Refueling Outage No. 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This change involves no physical modification to the plant nor would require any different operator action during any operating condition. Thus, there would be no increase in the probability of occurrence of an accident previously evaluated in the PNPS safety analysis report; therefore this change does not increase the consequences of an accident previously evaluated in the safety analysis report.
2. This change involves no new equipment. It does not violate 10 CFR 50, Appendix K limits. Hence, this change does not increase the probability of occurrence of the consequences of a malfunction of equipment important to safety previously evaluated in the safety analysis report.
3. We have determined the new approved methodology for LOCA evaluations does not affect the safe operation of Pilgrim. The requirements of 10 CFR 50, Appendix K are met by the new methodology; hence the operation of Pilgrim in accordance with the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Susan Shankman, Acting

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 15, 1991

Description of amendments request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation, and Section 6.10.3, Record Retention.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions. The revisions to Section 6.0 of the Technical Specifications reflect changes in the organizational reporting structure of CP&L due to the creation of the Nuclear Assessment Department (NAD). The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the Corporate Nuclear Safety Section (CNSS) as outlined in the Specifications, will not be altered by the change. Rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Auditing Unit of the Corporate Quality Assurance Department will not be altered by the change, but will reflect a reporting realignment of the individuals and organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.
2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amedment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As a result of the change, the Brunswick Technical Specifications will better reflect the actual management structure at both the Brunswick Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit 2, Darlington County, South Carolina

Date of amendments request: January 15, 1991

Description of amendments request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation, and Section 6.10.3, Record Retention.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions.

The revisions to Section 6.0 of the Technical Specifications reflect changes in the organizational reporting structure of CP&L due to the creation of the Nuclear Assessment Department (NAD). The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the Corporate Nuclear Safety Section (CNSS) as outlined in the Specifications, will not be altered by the change. Rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Auditing Unit of the Corporate Quality Assurance Department will not be altered by the change, but will reflect a reporting realignment of the individuals and organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amedment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As a result of the change, the Brunswick Technical Specifications will better reflect the actual management structure at both the Brunswick Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: January 15, 1991

Description of amendment request: The proposed amendment would revise numerous Technical Specifications (TS) in support of the realignment of some of Carolina Power & Light Company's (CP&L's) organizational structure. CP&L has created a Nuclear Assessment Department (NAD) to assume the functions and responsibilities for (1) administering CP&L's independent review program for nuclear facilities that is currently provided by the Corporate Nuclear Safety Section (CNSS), and (2) auditing of the unit activity currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department.

The TS mandated functions are retained; however, the consolidation of functions and organizational unit title changes requires corresponding changes to the appropriate TS sections, specifically, Section 6.2, Organization; Section 6.5, Review and Audit; Section 6.7, Safety Limit Violation; and Section 6.10.3, Record Retention. The changes also realign the evaluation of CP&L's Licensee Event Reports (LER) for potential applicability to other CP&L nuclear plants to a shared responsibility between the on-site Regulatory Compliance Unit and the Corporate Nuclear Licensing Section for the operational feedback function.

In addition to the changes related to the formation of the NAD, the position of Assistant Plant General Manager is being eliminated and is, therefore, being deleted from the list of members of the Plant Nuclear Safety committee (PNSC). Also, updating of position titles is included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it is administrative in nature and does not physically alter any safety-related systems nor does it affect the way in which any safety-related systems perform their functions.

Section 6.0 of the Technical Specifications was revised to reflect changes in the organizational reporting structure of CP&L due to the creation of the NAD. The proposed change is administrative in nature in that the changes reflect organizational reporting changes rather than changes in the nature or depth of reviews and audits; recommendations for procedures, modifications, maintenance and operations activities; or other means of affecting unit safety. The independent review function currently provided by the CNSS as outlined in the Specifications, will not be altered by the change; rather the proposed change will merely reflect a reporting realignment of the individuals and organizations currently providing the independent review function. Similarly, the audit of unit activity function currently provided by the Quality Assurance Services Section of the Corporate Quality Assurance Department will not be altered by the change; but will reflect a reporting realignment of the individuals and

organizations currently providing the audit function. The other revisions to titles and organizations in the proposed change solely revise the Technical Specifications to reflect the current organizational structure of the Company.

The position of Assistant Plant General Manager has been eliminated at SHNPP [Shearon Harris Nuclear Power Plant]. As such the proposed change deletes the Assistant Plant General Manager from the list of PNSC members provided in Technical Specification 6.5.2.2. This position provided no additional area of expertise not already covered by other PNSC members and can be eliminated without impact on the decision making capability of the PNSC and without any impact on safe operation of the plant. The meeting frequency, quorum requirements, and responsibilities of the PNSC are not affected by this proposed change to composition of the PNSC. The other title change which have been made within Section 6.5.2.2 relating to composition of the PNSC, have been made solely for the purpose of updating these position titles to reflect current position titles. These title changes have no impact on the capability of the PNSC to perform its function and have no impact on the safe operation of the plant.

Deletion of the Technical Specification requirement that CNSS (now NAD) personnel evaluate all CP&L LERs for potential applicability to other CP&L plants will not result in the elimination of the LER review activity. This activity, which is part of the Operational Experience Feedback (OEF) function, is being transferred to the on-site Regulatory Compliance Unit and the Corporate Nuclear Licensing Section in the General Office as a shared responsibility. The on-site Regulatory Compliance Unit will provide plant-specific LER review to identify issues which have potential applicability to other CP&L nuclear plants. The Nuclear Licensing Section will perform an oversight function as part of its natural generic regulatory responsibility to help assure consistent feedback to and consideration of individual plant issues at the other CP&L nuclear plants.

Deletion of the Technical Specification requirement from this section will not impact safe operation of the plant since this change is administrative in nature and does not alter the review or feedback activities. In fact, NUREG-0737 Section I.C.5 specifies that Technical Specifications are not required to implement this OEF activity.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1, the proposed change is administrative in nature and does not physically alter any safety related systems, nor does it affect the way in which any safety related systems perform their functions. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change is administrative in nature and does not physically alter any safety related systems nor does it affect the way in which any safety related systems perform their functions. As a result of the change, the Shearon Harris Technical Specifications will better reflect the actual management structure at both the Shearon Harris Nuclear Power Plant and the Corporate Office. Therefore, the proposed amendment does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the 50.92(c) licensee's analysis and, based on this review, it appears that the three standards are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: January 18, 1991, as supplemented February 4, 1991

Description of amendments request: The amendment request proposes two changes to the Administrative Controls section of the Technical Specifications. The first proposed change would change the title of the Assistant Vice President Quality Programs and Assessment to the General Manager Quality Programs and Assessment. The scope and responsibilities of the position would remain unaffected. The second proposed change is intended to clarify the Station Control Room Engineer (SCRE) to Shift Technical Advisor (STA) formal turnover.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed Operating License/Technical Specification Amendment has been evaluated to determine whether or not there is a Significant Hazards Consideration based on the questions provided by 10 CFR 50.92 requirements. In addition, the evaluation was measured against the criteria used to establish safety limits, the limiting safety system settings, and the limiting conditions for operations. The results of the evaluation determined that the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed change does not result in a significant increase in the probability or consequences of accidents previously evaluated. The changes are administrative in nature, and as such are not considered in any FSAR Chapter 15 analysis. The changes do not effect any administrative process which could impact the assumptions or results of the analyses.

The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated. The proposed changes do not result in the introduction of any new or different equipment, and they will not cause the operation of installed equipment in a new or different manner. The changes will not result in the introduction of any new procedure or process which could create a new or different kind of accident.

The proposed change does not involve a significant reduction in margin of safety. Because the changes are purely administrative in nature, no margin of safety is affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 24, 1990

Description of amendment request: The proposed amendments would revise the in-place penetration and bypass leakage requirement in Technical Specification (TS) 4.7.6.c.1, 4.7.6.f, and 4.7.6.g from less than 1% to less than 0.05%. The proposed revision places a more restrictive limit in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Operation of McGuire in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The request to change the TS requirement for in-place HEPA penetration and carbon bypass leakage from less than 1% to less than 0.05% constitutes a more restrictive requirement that will further ensure adequate filtration of the control room air as required to maintain the control room habitable during all phases of operation. Additionally, the proposed revision complies with Regulatory Guide 1.52 Revision 2 as clarified by Generic Letter 83-13. Operating under this proposed change, the VC system will continue to maintain proper temperature, cleanliness, and pressurization in the control room during plant operation, shutdown, post accident conditions, and all feasible weather conditions. There will be no hardware, system modifications, or operational changes to the VC system as a result of the proposed change. Therefore, the probability of an accident previously evaluated will not increase. By placing the more restrictive requirement on the VC system, the consequences of an accident, specifically the control room dose, will be maintained below regulatory limits.

Operation of the McGuire facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident previously evaluated. As stated above, this revision imposes a more restrictive requirement that will further ensure adequate filtration of the control room air as required to maintain the control room habitable during all phases of operation. There will be no hardware, system modifications, or operational changes to the VC system as a result of the proposed change. Therefore, no new or different accident scenarios are created.

Operation of the McGuire facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. By imposing the more restrictive requirement, the proposed revision will ensure the margin of safety provided by the 99% decontamination efficient HEPA and carbon filters will be maintained. By decreasing the allowed HEPA penetration and carbon bypass leakage from less than 1% to less than 0.05%, the designed margin of safety will be maintained, and reflected in the TS.

Based on the preceding discussion, Duke concludes that the proposed amendment request does not involve a significant hazards consideration as defined by 10 CFR 50.92.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001.

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: January 29, 1991

Description of amendment request: The proposed amendments revise the Arkansas Nuclear One, Unit 1 (ANO-1) Technical Specification (TS) 3.3 and 4.5.2 regarding the reactor building emergency cooling system. Specifically, the TS would be clarified by defining a reactor building cooling train in terms of equivalent cooling capacity to meet the design requirements as specified in the Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change restricts interpretation of the specification while ensuring the design basis requirements are met. The configuration required by the proposed specification are permitted by the existing specification. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature, therefore the change does not involve an increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

No new configuration is allowed by this change to the nomenclature in the Specification. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature. This change serves to clarify the specification and provide further information in the Bases. The configuration required by the proposed specification is permitted by the existing specification. Any deviation from that of normal configuration will require an evaluation per 10CFR50.59 and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The purpose of this change is to define the requirements for the reactor building emergency cooling in terms of heat removal capacity rather than in terms of specific component operation. The required configurations are unaffected and the design basis is unchanged. The change in nomenclature from reactor building cooling to reactor building emergency cooling is administrative in nature. Providing clarification and references to the system design basis does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Thomas P. Gwynn, Acting Director

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 29, 1991

Description of amendment request: This proposed change to the Arkansas Nuclear One, Unit No. 2 (ANO-2) Technical Specifications (TS) would revise the Action statements associated with Limiting Condition for Operation (LCO) 3.2.1, Linear Heat Rate and LCO 3.2.4, DNBR Margin. LCOs 3.2.1 and 3.2.4 currently require core power to be maintained less than the linear heat rate (LHR) and departure from nucleate boiling ratio (DNBR) power operating limits calculated by the Core Operating Limits Supervisory System (COLSS). If COLSS is out of service, the LHR and DNBR must be maintained within a more restrictive set of limits based on the Core Protection Calculators (CPCs). With these limits not being maintained, corrective action must be initiated within 15 minutes to restore the LHR and DNBR to within the applicable set of limits (depending on whether or not COLSS is operable) within 1 hour or the plant must be in at least Hot Standby within the next 6 hours.

The proposed change adds a distinction between the Action requirements for exceeding a COLSS calculated power operating limit (an actual plant condition warranting rapid corrective action) and the Action requirements for exceeding a CPC calculated operating limit (when COLSS is out of service). When COLSS is in service, the present Action remains essentially unchanged except that the power level that must be maintained if the LHR or DNBR Limits cannot be restored will be increased to be consistent with the present TS Applicability. However, with COLSS out

of service, the proposed change will replace the current 15 minute time limit for initiating corrective action with a requirement to return COLSS to service within 2 hours. The time allowed for restoration of the DNBR and LHR Limits would then increase from 1 hour to 2 hours. If the DNBR and LHR limits are not restored within the 2 hours, the proposed change would require reactor power to be reduced to less than or equal to 20% of Rated Thermal Power within the next 6 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Criterion 1 - Does not involve a significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not modify the requirement to operate within the alternate LHR and DNBR limits nor does it modify the actual LHR or DNBR limits themselves. The proposed change simply makes a distinction between the Action requirements associated with exceeding a COLSS calculated power operating limit and the Action requirements associated with exceeding a CPC calculated operating limit following the loss of COLSS. In the first case (exceeding a COLSS calculated [power operating limit] POL), Entergy Operations agrees that corrective action should be initiated promptly to bring the LHR and DNBR within their respective limits and, in this case, a 15 minute time limit is appropriate. However, in the latter case (exceeding a CPC calculated operating limit following the loss of COLSS), it is clear that simply because COLSS indication is lost does not mean that the plant is operating outside the range of conditions assumed in Chapter 15 Safety Analysis and, in this case, a 15 minute time limit is not appropriate. An increase from 15 minutes to 2 hours to regain the monitoring capabilities of COLSS would not significantly increase the probability of exceeding the actual LHR or DNBR power operating limits since the increase in COLSS out-of-service time will be compensated for by increasing the monitoring frequency of the important CPC calculated parameters. Further, since the proposed change will result in maintaining steady-state conditions it will be easier for the operators to detect any abnormal occurrence that has the potential to degrade either the LHR or the DNBR.

The primary consideration in extending the COLSS out of service time limit is the remote possibility of a slow, undetectable transient that degrades the LHR and/or DNBR slowly over the 2 hour period and is then followed by an [Anticipated Operational Occurrence] AOO or an accident. The parameters normally monitored by COLSS which have the potential for degrading the LHR and DNBR if no corrective action is taken are: Reactor Coolant System (RCS) flow rate, axial and radial power distributions, core inlet temperature, core power, RCS pressure and azimuthal tilt. Of these parameters, core inlet temperature, core power, and RCS pressure are easily monitored by the plant operators using various safety-grade, redundant Control Room indications and, therefore changes in these parameters are readily apparent. Further, operating experience at ANO-2 and other [Combustion Engineering] CE nuclear steam supply systems using the same reactor coolant pumps (RCPs) as ANO-2 has shown that measurable changes in RCP [delta]Ps (which COLSS uses to calculate RCS flow) are very rare. When they do occur they involve abrupt step changes in flow which are readily apparent; hence, the probability of a slow degradation in the RCS flow rate is exceedingly small. Thus, the parameters that comparatively (although still remote) pose the highest potential for a degradation in the core thermal margin when COLSS is out of service relate to the axial and radial core power distributions and the azimuthal tilt. These parameters are discussed below.

Axial xenon oscillations are a normal consequence of the ANO-2 core design, particularly near the end of core life. As a result, ANO-2 operations personnel are instructed, per operating procedures to maintain strict control over the axial power shape in the core. Although the primary reason for axial shape control is to maintain an even fuel burnup throughout the core, it also results in maintaining the axial power shapes well within the limits assumed in the safety analysis. Typically, axial shape control practice at ANO-2 maintains the Axial Shape Index (ASI) within 0.05 ASI units of the Equilibrium Shape Index (ESI), which is normally very near 0.0.

Hypothetically, the most severe situation which could be postulated to occur, although again remote, would be if COLSS execution was lost just when the plant operators were ready to take manual action to return the ASI value to within the ESI 27 0.05 control band. Since a full xenon oscillation takes approximately 26 hours, there would be about 6 hours from the time that control action would normally be taken to the time that the ASI reached its peak value (i.e., it takes one quarter cycle for the ASI to travel from its ESI value to its peak value). Since operating procedures will be revised to require the CPC calculated LHR and DNBR to be monitored every 15 minutes (see below), any significant change in the ASI index will be apparent through a change in these CPC calculated values. Hence, due to the attention given the axial power distribution, both when COLSS is in service as well as when COLSS is out of service, it is very improbable that a change in ASI during two hours of steady-state operation with COLSS out of service could be either undetected or lead to a condition that place the reactor outside the range of initial conditions that were assumed in the safety analysis.

With regards to azimuthal tilt, there is very rarely any significant change in this parameter as long as all Control Element Assemblies (CEAs) are properly aligned. The only real contributor to a rapid increase in azimutha1 tilt would be an inadvertent CEA drop; however, since the probability of a CEA drop is very low, the likelihood of this event occurring within the two hour time limit is even lower. In the unlikely event that a CEA drop did occur, the Control Element Assembly Calculators (CEACs) provide a safety-grade, redundant means of alerting the operators that corrective action is necessary. Thus, the potential for a degradation in azimuthal tilt during two hours of steady-state operation following the loss of COLSS is both highly unlikely and relatively easy to detect using instrumentation already available in the Control Room. The ANO-2 Technical Specifications currently address actions for a dropped CEA.

As previously stated, upon approval of the proposed change, plant personnel will revise operating procedures to increase the monitoring frequency of the CPC calculated values of LHR and DNBR. Currently, procedures require that immediately following the loss of COLSS and every 2 hours thereafter, plant operators record (among other things) the CPC calculated values of LHR and DNBR. Procedures will be revised to require that the monitoring frequency for LHR and DNBR be increased from once every 2 hours to once every 15 minutes. Moreover, this procedure will be revised to define a maximum allowable change in the CPC calculated LHR or DNBR such that further degradation will require the operators to take immediate action to reduce reactor power and comply with the appropriate COLSS out of service TS limits. The monitoring frequency for DNBR and LHR of once every 15 minutes will be used until either COLSS is restored to service or DNBR and LHR have been restored to within their limits, at which time the monitoring frequency will become once per 2 hours as allowed by the existing surveillance requirements. Implementation of this procedure change provides additional assurance that potential reductions in core thermal margin will be quickly detected and, should it prove necessary, result in a decrease in reactor power and subsequent compliance with the existing COLSS out of service TS limits.

Extending the time to restore the CPC calculated LHR and DNBR to within the acceptable operating range from 1 hour to 2 hours is being proposed to assure that the maneuver can be accomplished in a gradual and controlled manner thus decreasing the probability of an avoidable challenge to the Reactor Protection System (RPS). When this Action statement was originally written it was anticipated that only a relatively small power reduction would be required to bring the reactor into conformance with the CPC operating limits. This relatively small power change could be accomplished in a fairly controlled manner over the one hour time limit currently in the TS; however, due to changes in CPC and COLSS software, it is possible that the required power reductions may exceed 25% near the end of the fuel cycle. These large power reduction rates result in a rapid increase in xenon concentration and a subsequent decrease in cold leg temperature (T-cold) that may be difficult to control. At the end of an operating cycle it is possible that such an event could lead to a violation of the minimum cold leg temperature Tech Spec (LCO 3.1.1.4) and/or a CPC generated reactor trip on T-cold out-of-

range. Accordingly, given the potential for power reductions of this magnitude, it is appropriate to extend the time allowed to complete the maneuver so that it may be performed in a more gradual and controlled manner.

Changing the core power which must be maintained if the LHR and/or DNBR limits cannot be restored in the proposed 2 hours time limit from "Hot Standby" to "less than or equal to 20% of Rated Thermal Power" is consistent with the ANO-2 TS philosophy. That philosophy requires the reactor to be placed in an Operational Mode in which the LCO is no longer applicable if that LCO or its associated Action statements cannot be satisfied. Power levels of 20% and below, in combination with compliance with all other LCOs [sic] (e.g., CEA Insertion Limits), ensure that sufficient LHR and DNBR margin will be available and results in a core power high enough to allow the in-core and ex-core neutron detectors to provide meaningful data to the COLSS and CPCs, respectively. This higher power level will facilitate COLSS trouble-shooting and aid in the determination of COLSS operability once COLSS execution is restored.

The proposed changes will eliminate unnecessary power reductions along with the rate at which the power reductions are accomplished. The proposed change will result in significant operational benefits while continuing to maintain a high degree of confidence that the core conditions remain well within the range of values assumed in the safety analysis. Therefore, the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does not create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not alter the current power operating limits nor does it involve any changes to COLSS or CPC software. There has been no physical change to plant systems, structures or components nor will the proposed change affect the ability of any of the safety-related equipment required to mitigate AOOs or accidents. The only significant change associated with the proposed amendment involves changes to the operating procedures used when COLSS is out-of-service. All revisions to operating procedures will be reviewed and approved by appropriate plant personnel as required by the Administrative Controls (Section 6) in the ANO-2 Technical Specifications. Thus, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Does not Involve a Significant Reduction in the Margin of Safety.

The intent of LCOs 3.2.1 and 3.2.4 is to maintain the reactor within the range of initial conditions that was assumed in the Safety Analysis. Maintaining the LHR within the specified range ensures that in the event of a LOCA, the fuel cladding temperature will not exceed the 2200° F limit imposed by 10CFR46. Maintaining the DNBR within the specified range ensures that no AOO will result in a violation of the [Specified Acceptable Fuel Design Limits] SAFDLs and that no postulated accident will result in consequences more severe than those described in Chapter 15 of the FSAR. Since there has been no change to the requirement to operate the reactor within the LHR and DNBR limits and no change to the actual LHR and DNBR limits themselves, the accident analyses described in Chapter 15 of the FSAR will not be affected and will therefore remain bounding.

The proposed change will eliminate unnecessary power reductions along with the rate at which the power reductions are accomplished. Maintaining steady-state conditions for up to two hours after the loss of COLSS while increasing the CPC LHR/DNBR monitoring frequency, provides plant personnel with a reasonable period of time to return COLSS to service while continuing to maintain a high degree of confidence that the core conditions remain well within the range of values assumed in the safety analysis. Moreover, by reducing the number of plant transients there will be a reduction in probability of an AOO and subsequent RPS actuation. Hence, operation of the facility in accordance with the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Thomas P. Gwynn, Acting Director

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 8, 1991

Description of amendment request: The request proposes amending the Technical Specifications by replacing certain values of cycle-specific parameter limits with a reference to the Core Operating Limits Report (COLR), which would contain those limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The removal of cycle-specific core operating limits from the South Texas Project Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The core operation limits, although not in the Technical Specifications, will be followed in the operation of the South Texas Project, Units 1 and 2. The proposed amendment requires exactly the same actions to be taken if a core operating limit is exceeded that the current Technical Specifications do. The cycle-specific limits in the COLR will continue to be controlled by the South Texas Project programs and procedures. Each accident analysis addressed in the South Texas Project FSAR will be examined with respect to changes in the cycle-dependent parameters, which are obtained from the use of NRC approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be conducted per the requirements of 10 CFR 50.59, will ensure that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the cycle specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle specific variables are calculated using the NRC approved methods, and submitted to the NRC to allow the staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the core operating limits, and appropriate actions will be required if these limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed amendment does not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle specific limits. The proposed amendment continues to require operation within the core limits as obtained from the NRC approved reload design methodologies, and the actions to be taken if a limit is exceeded remains unchanged.

The development of the limits for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 safety review to assure that operation of the unit

within the cycle specific limits will not involve a significant reduction in the margin of safety. Therefore, the proposed changes are administrative in nature, and do not impact the operation of the South Texas Project in a manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: George F. Dick, Jr., Acting

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: January 16, 1991 and Supplement dated February 15, 1991.

Description of amendment request: The proposed amendment would change Technical Specification (TS) 4.7.A.3 "Containment Systems," to allow the use of the "mass point" methodology, in addition, or as an alternative to, the presently approved "total time" methodology.

Basis for proposed no significant hazards consideration determination:

At the present time, TS 4.7.A.3 requires the use of ANSI N45.4-1972 (the "total time" method) for calculation of the containment leak rate. The licensee has proposed that the use of the mass point method be incorporated in TS 4.7.A.3 to be used in conjunction with, or instead of, the total time method.

It has been recognized by the professional community that the mass point method is an acceptable means for calculation of containment leakage in addition to the two other methods, point-to-point and total time which are referenced in ANSI N45.4-1972. The mass point method calculates the air mass at each point in time, and plots it against time. A linear regression line is plotted through the mass-time points using a least square fit. The slope of this line is proportional to the leakage rate. The mass point method has some advantages when it is compared with the other methods. In the total time method, a series of leakage rates is calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing, or outgassing) the initial data point is not accurate, the results of the test will be affected.

The staff has determined that these two methods (mass point and total time) are acceptable methods which may be used to calculate containment leakage rates as described in 10 CFR Part 50, Appendix J, Section III.A.3(a).

Title 10, CFR 50.92, "Issuance of Amendment," contains standards for addressing the existance of no significant hazards considerations with regard to issuance of license amendments. In this regard, the proposed change to TS 4.7.A.3 would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to the TS involves a method of containment testing, has no effect on reactor operation and thus cannot effect the probability of an accident. Since the mass point methodology provides a reliable indication of containment leakage, and the TS will continue to assure that containment leakage will remain acceptably low, there will be no increase in the consequences of previously analyzed accidents involving off-site releases.
2. Create the possibility of a new or different kind of accident from any previously evaluated. The proposed change to the TS, which involves an acceptable means of containment leak rate testing, will not result in a degradation of containment integrity or otherwise affect any other system important to safety. Accordingly, no new or different kind of accident will be created.
3. Involve a significant reduction in a margin of safety. Since containment integrity will continue to be maintained with use of the mass point methodology, there will be no decrease in the margin of safety for those accidents requiring containment integrity.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: November 15, 1990 (Reference LAR 90-12)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to allow 5 cubic feet per minute (cfm) leakage at 1.5 times the system design operating pressure through the Auxiliary Building Safeguards Air Filtration System Dampers M2A and M2B. The TS currently require no detectable leakage. TS 4.7.6.1.6.1 would be revised as follows:

(1)Allow a quantitative bypass leak rate for the Auxiliary Building Safeguards Air Filtration System Dampers M2A and M2B of a maximum of 5 cfm at 1.5 times the system design operating pressure. This damper leakage test is proposed to be performed on an 18-month refueling outage frequency.

(2)Delete the requirement to perform a surveillance of dampers M2A and M2B following any structural maintenance on the HEPA filter or charcoal adsorber housing or following painting, fire, or chemical release in any ventilation zone communicating with the system.

The damper leakage testing results presently involve an interpretation that leads to a subjective determination that no bubbles be present during the test as a result of damper leakage. These dampers are large mechanical structures (6-foot diameter butterfly valves). Attaining an absolute zero leak rate on these ventilation dampers is not a practical goal considering their design and function. A more objective standard is a quantitative leak rate limit based on analysis with consideration given to establishing a limit at which a physical problem with the dampers is indicated. A very small leak as indicated by a bubble test does not necessarily indicate a degrading condition or operability problem.

The licensee has stated that establishing a quantitative leakage rate based on conservative dose rate analysis will provide an objective basis to perform surveillance testing on the auxiliary building ventilation system (ABVS). The proposed quantitative leakage limit has also been reviewed to ensure that implementation would not adversely affect system performance between refueling outage testing. The radiological consequences analysis

results indicated a negligible change in control room and offsite radiation doses for the selected value of quantitative damper leakage. Upon approval of the proposed change, the licensee will leak test dampers M2A and M2B on a refueling outage frequency using the new leakage limits as established by analysis. A direct measurement test will be employed to quantitatively measure the leak rate from dampers M2A and M2B. The system leak test pressure will be lowered to 1.5 times the system design operating pressure. Presently, the system design operating pressure is approximately 8 inches water gauge, resulting in a test pressure of 12 inches water gauge. A rest pressure of 1.25 times the system operating pressure is referred to in ANSI N510 and is closer to actual operating conditions than the 30 inches water gauge (approximately 3.75 times the system design pressure) test pressure currently specified in the TS. A test pressure value is not included in the proposed TS since the system design operating pressure could change as the result of a fan replacement or a fan sheaving change out. If an actual test value was included in the TS, changes in the system design operating pressure would require a license amendment request and NRC issuance of a license amendment. The basis for the test value would still be included in the TS and any changes to the system design operating pressure would require a 10 CFR 50.59 evaluation. No design changes are required to quantitatively measure damper leakage rate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The results of the analysis to support the proposed leakage change demonstrate that an unfiltered bypass damper leakage of less than or equal to 5 cfm would result in total offsite and control room dose increases of less than 0.05 percent during a LOCA and during post-LOCA recirculation. Increases of this amount are insignificant with respect to the LOCA and post-LOCA dose analysis. Damper leakage less than or equal to 5 cfm is within reasonable limits of the design of the damper and will not increase the probability of equipment failure.

Replacing the actual test pressure value in TS 4.7.6.1.b.1) with a functional requirement for the test pressure value constitutes an administrative improvement. This change will provide enhanced flexibility in accommodating changes to the actual test pressure value while providing for careful review and analysis, in accordance with 10 CFR 50.59, of any modifications of the system design operating pressure of the system. The careful review and analysis of a change and the requirement for prior Commission approval through the 10 CFR 50.59 review process provides assurance that plant safety is not adversely affected. In addition, the proposed license amendment would not alter the function or the operation of the system.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes would not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The results of the analysis to support the proposed leakage change show that an unfiltered leakage of less than or equal to 5 cfm would result in total offsite and control room dose increases in less than 0.05 percent during a LOCA and during post-LOCA recirculation. The conclusions presented in the FSAR Update on personnel doses from a DBA LOCA remain unchanged and 10 CFR 100 criteria are still met.

Also, [...] the proposed change to TS 4.7.6.1.b.1) involving the replacement of an actual test pressure with a functional requirement is administrative. The change will facilitate revisions to the test pressure value without affecting the requirements for testing the ABVS dampers. Changes to the system design operating pressure are controlled through application of the 10 CFR 50.59 process.

Therefore, the proposed changes to do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 21, 1990 (Reference LAR 90-14)

Description of amendment request: The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to add a new TS 3/4.7.1.6 for the Main Feedwater Regulating, Bypass and Isolation Valves and to increase the Main Feedwater Regulating Valve closure time limit from 5 to 7 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of TS 3/4.7.1.6 is administrative, constitutes an additional restriction, and clarifies the requirements for plant components.

A 7 second closure time (a 2 second increase over that presently allowed in the TS) for the Main Feedwater Regulating and Bypass Valves is assumed in the FSAR Update accident analyses as well as the containment analysis to support [removal of the Boron Injection Tank]. Based on these analyses, it is concluded that the proposed increase in the TS valve closure time does not adversely affect any of the accident analyses results.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The addition of TS 3/4.7.1.6 is administrative, constitutes an additional restriction, and clarifies the requirements for plant components. No new method of operation is introduced by the change, nor will there be a change in the method by which any safety-related system performs its function.

Increasing the Main Feedwater Regulating and Bypass Valve closure time does not require physical alteration to any plant system, or change the method by which any safety-related system performs its function.

Therefore, the proposed change do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The addition of TS 3/4.7.1.6 clarifies the requirements for plant components. The

change is administrative and does not alter the margins of safety established in previous accident and transient analysis.

Increasing the Main Feedwater Regulating and Bypass Valve TS closure time from 5 to 7 seconds does not affect the conclusions of the applicable FSAR Update analyses.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 4, 1990; superseded January 22, 1991

Description of amendment request: The licensee has provided additional information which clarifies documentation submitted for the proposed amendment dated April 4, 1990. The proposed amendment would delete the references to Footnote Number (9) in Technical Specification Table 4.2-2, "Minimum Test and Calibration Frequency for Core and Containment Cooling System" for the High Pressure Coolant Injection (HPCI) Subsystem Auto Isolation and for the Reactor Core Isolation Cooling (RCIC) Subsystem Auto Isolation, Items Number 5 and 7, respectively, in the table. The proposed change would result in deletion of the functional test requirements for the time delay relays and timers associated with the automatic isolation signals for the HPCI and RCIC Systems. These relays and timers were originally designed to initiate a time delay in the event of a steam line or packing leak so that the leak could be manually isolated prior to automatic isolation of the HPCI and RCIC steam supply piping. However, the relays and timer have not been calibrated nor functionally tested since initial plant startup and the feature is not incorporated into the various plant accident analyses. The time delay feature has, therefore, been defeated and the valves will shut immediately when the setpoint is reached.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The licensee has evaluated the proposed amendment against the standards provided above and has made the following determination:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1.Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to Table 4.2-2 remove the requirement for functional testing of the time delay relays and timers for the HPCI and RCIC automatic isolation signals.

The original design of the HPCI and RCIC automatic isolation signals included time delay devices for postulated steam supply line or packing leaks. Since the HPCI and RCIC steam supply piping are physically adjacent to the main steam supply piping where the steam lines penetrate the primary containment and for a portion of their route to their respective steam turbines, the steam leak detectors for both the HPCI and the RCIC systems could be activated by a leak in any of the steam lines. To prevent needless automatic isolation, time delays were incorporated into initial plant design to allow time to investigate leaks in the vicinity of the steam supply piping and effect manual isolation prior to automatic closure of the HPCI and/or RCIC steam supply valves.

The FitzPatrick Final Safety Analysis Report (FSAR) contains a discussion regarding the physical separation of the HPCI and RCIC steam lines and the location of the leak detectors. The potential for isolation of both steam lines as a result of a single steam leak was also considered. Although the time delay devices are referenced in the FSAR as a means to eliminate spurious isolations, no such time delay is assumed in the High Energy Line Break (HELB) analysis or the FSAR accident analyses. In addition, since the HPCI and RCIC systems are not required to mitigate pipe breaks outside of the primary containment, simultaneous isolation of both systems, should it occur, is within the scope of the plant design bases.

The potential consequences of either HPCI or RCIC turbine steam line break are less severe without the presence of the delay isolation. Without the delay circuitry, coolant inventory lost through a postulated leak in the HPCI or RCIC systems is reduced. Consequently, peak temperatures in the vicinity of the leak are reduced.

The proposed technical specification change to delete the surveillance requirements for the time delay devices is consistent with the present plant status, concurs with the HELB analysis, and would not result in an unanalyzed plant condition. Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

2.Create the possibility of a new or different kind of accident from those previously evaluated. The original design of the HPCI and RCIC systems high room temperature isolation logic, as outlined in the FSAR, included time delay devices. These devices were provided for the sole purpose of avoiding spurious isolation during normal operation and had no effect on system response during the transient or accident conditions outlined in the FSAR. However, these time delays were not incorporated into present plant accident analyses or transients described in the HELB analysis. In addition, simultaneous isolation of both the HPCI and RCIC steam supply lines during postulated pipe breaks outside primary containment does not affect safe shutdown capability. Low Pressure Coolant Injection (LPCI), in conjunction with the Automatic Depressurization System (ADS), is functionally redundant to HPCI and RCIC.

Therefore, removal of the requirement to perform surveillance tests associated with these time delay devices will not create a new or different kind of accident.

3.Involve a significant reduction in the margin of safety.

The surveillance test which would be removed from the technical specifications will not affect the margin of safety resulting from operation of the HPCI or RCIC systems since operation of the time delays was not assumed in the accident analysis described in the FSAR or in the HELB analysis. Also, the timers are not required to operate in order for the HPCI or RCIC systems to perform their desired function and were included in original system design for the sole purpose of preventing spurious isolation during normal operation.

The changes will increase the margin of safety by decreasing the amount of time that elapses between the detection

of a steam line leak and an automatic isolation signal. A high area temperature in the vicinity of the HCPI or RCIC steam lines will promptly and automatically isolate both steam supply lines. Based on operational experience, the increased probability of a spurious isolation is small. Other methods for the early detection and investigation of steam line breaks are available to operators. In the event of an accident coincident with the isolation of both steam lines, a functionally redundant system remains available to safely shut down the plant. Therefore, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: November 13, 1990 as supplemented January 15 and January 22, 1991.

Description of amendment request: The amendment would revise the license to include a new entity, North Atlantic Energy Service Company (NAESCO), as a licensee and would authorize NAESCO, as agent for the other licensees, to manage, operate, and maintain Seabrook Station. NAESCO would be a wholly owned service company subsidiary of Northeast Utilities (NU), and whose sole function would be to serve as the managing agent for Seabrook. At the Time of Effectiveness, responsibility for the management, operation, and maintenance of Seabrook would transfer to NAESCO from Public Service Company of New Hampshire (PSNH), acting through New Hampshire Yankee Division.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The technical qualifications of NHY, the NU system companies and Yankee Atomic Electric Company (YAEC) have already been approved by the NRC. There will be no changes that would adversely affect the NRC's conclusions on the technical qualifications of the Seabrook management, operating or maintenance organizations as documented in the Seabrook Safety Evaluation Report as supplemented.

Further, as a result of the proposed license amendment, there will be no physical changes to the Seabrook facility and all Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specifications will remain unchanged. Additionally, with the exception of administrative changes to reflect the role of NAESCO, the commitments in the Seabrook Quality Assurance Program, and the Seabrook Emergency Plan, Security Plan, and Training Program will be unaffected. Moreover, the license amendment will not result in any changes to NHY's regulatory commitments to the NRC.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The Seabrook design and design bases will remain the same. The current plant safety analyses will therefore remain complete and accurate in addressing the licensing basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits for Seabrook are not affected by the proposed license amendment. With the exception of administrative changes to reflect the role of NAESCO, plant procedures will be unaffected. As such, the plant conditions for which the design basis accident analyses have been performed will remain valid. Therefore, the proposed license amendment cannot create the possibility of a new or different kind of accident than previously evaluated.

3. Involve a reduction in a margin of safety. Plant safety margins are established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the Technical Specifications. Since there will be no change to the physical design or operation of the plant, there will be no change to any of these margins. Thus, the proposed license amendment will not involve a reduction in a margin of safety.

The staff notes that the licensees contemplate that this transition will be initially accomplished by transferring to NAESCO the existing staff of NHY and all existing authority to administer contracts with respect to Seabrook. This would achieve continuity in the management of Seabrook by allowing NAESCO to initially assume the role of operator of Seabrook with the same staff and contractor support resources that the NRC has previously evaluated and approved in connection with the technical qualifications of PSNH, including the engineering and technical staff of YAEC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

In order to assure that the role of NAESCO is solely to act as the managing agent for the plant, the staff would condition the license to prohibit NAESCO from marketing or brokering power or energy from the plant. In addition, the license condition would indicate that all licensees other than NAESCO are responsible and accountable for the actions of their agent to the extent said agent's actions effect the marketing or brokering of power and energy from Seabrook Station, Unit 1.

Local Public Document Room location: Exeter Public Library, 47 Front St., Exeter, New Hampshire 03833.

Attorney for licensee: Thomas G. Dignan, Esq., John A. Ritscher, Esq., Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director:: R. Wessman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Units 1 and 2, Salem County, New Jersey

Date of amendment request: October 2, 1990

Description of amendment request: This proposed amendment modifies Table 4.3-1, Reactor Trip System Instrumentation Surveillance Requirements, by adding a Note (5) to the Channel Functional Test that increases the test interval for Functional Unit 19, Safety Injection Input from SSPS. The proposed amendment changes the test interval from monthly to at least every 62 days on a STAGGERED TEST BASIS. This would make the test interval consistent with the interval for the remainder of the automatic actuation logic for the Reactor Protection System.

Also, Functional Unit 19 on Tables 3.3-1 and 4.3-1 would be changed from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF." This change will more accurately describe the portion of the reactor trip logic that is addressed by Functional Unit 19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The changes proposed herein for the Salem Generating Station Unit Nos. 1 and 2 Technical Specifications:

(1) do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change of Functional Unit 19 of Tables 3.3-1 and 4.3-1 from "Safety Injection Input from SSPS" to "Safety Injection Input from ESF" does not substantively change any Technical Specification requirement. It is intended to more accurately describe the function, whose purpose is to assure that a Safety Injection signal results in a Reactor Trip. Safety Injection is an Engineered Safety Feature (ESF) function. Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) functions, which comprise the Reactor Protection System (RPS), are performed by the Solid State Protection System (SSPS).

The proposed change to the Safety Injection Input from ESF Channel Functional Test frequency (Table 4.3-1) is consistent with the present RTS/ESFAS testing requirements at Salem Generating Station. Because Functional Unit 19 is a logic function internal to SSPS, the proposed test interval of 62 days is consistent with Automatic Actuation Logic testing of RTS/ESFAS in general. The monthly test frequency presently required is more appropriate for the Functional Units that provide an identifiable input to the RPS from a process parameter (e.g., Pressurizer Pressure - High). The monthly requirement for Functional Unit 19 is based on earlier revisions of Westinghouse Standard Technical Specifications, which were more appropriate for RPS and ESFAS systems using relays instead of solid state circuits. In the relay systems, RTS and ESFAS functions were performed by separate sets of cabinets. The Safety Injection performed provided a discrete input from the ESF cabinets to the Reactor Trip function, thereby warranting monthly testing.

Testing Automatic Actuation Logic on a 62 day Staggered Test Basis has been determined to provide an acceptable level of safety. Since Functional Unit 19 is part of the logic, testing should also be required on the same frequeny as the rest of the RPS logic. Therefore, the proposed change does not involve a significant increase in the probability or consequences in an accident previously evaluated.

(2) do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any changes to RTS/ESFAS actuation logic, nor does it involve any design changes or new configurations. Therefore, the proposed change does not introduce the possibility for any new or different kind of accident.

(3) involve a significant reduction in margin of safety.

The change in the testing frequency will be consistent with the Automatic Actuation Logic testing frequency that has previously been shown to assure an acceptable margin of safety with respect to RTS/ESFAS reliability. The proposed change does not involve a significant reduction in any margin of safety.

The NRC Staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell and Reynolds, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: This amendment request involves Technical Specification (TS) 3/4.8.1.1, "A. C. Sources - Operating," and, specifically, Surveillance Requirement (SR) 4.8.1.1.2.g.7. This SR directs that the emergency diesel generator (EDG) be run at rated load for 24 hours while maintaining required voltage and frequency. In addition, SR 4.8.1.1.2.g.7.d requires that SR 4.8.1.1.2.g.4.b, a simulated loss of offsite power (LOOP), be performed within 5 minutes of completing the 24 hour load test. South Carolina Electric & Gas (SCE&G or the licensee) proposes to delete SR 4.8.1.1.2.g.7.d and to add a new surveillance that would require the diesel generator to be run at 4150 to 4250 KW for 1 hour before commencing the LOOP test.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The requested change only involves the duration for which the full load temperature conditions are maintained prior to performing the LOOP surveillance. A change of this nature does not affect the performance, reliability, or capabilities of the EDG to fulfill its design functions. Therefore, this requested amendment has no impact on any accident previously evaluated.
2. The amendment request does not create the possiblity of a new or different kind of accident from any accident previously evaluated. The requested change only involves the duration for which the full load temperature conditions are maintained prior to performing the LOOP surveillance. The alteration of the surveillance requirements does not affect the normal operational methods, limits, or configuations with respect to the EDG. Therefore, the possibility of a malfunction or failure of any component or system which would result in a new or different kind of accident remains unaffected.
3. The amendment request does not involve a significant reduction in a margin of safety. The requested change does not alter any operational limits, practices or functions of the EDG, and the change maintains the technical basis of all of the surveillance objectives equal to that in the current surveillance requirements. Thus, neither the design nor accident analysis bases are impacted by the requested change, and therefore all safety margins remain unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed change would revise Surveillance Requirement 4.6.1.2 by allowing a one-time extension of the Integrated Leak Rate Test (ILRT) schedule. As the Technical Specifications (TS) read now, the test must be performed at intervals of no greater than 50 months. The proposed amendment would allow an extension of four months so that the ILRT will correspond with the 10-year shutdown as required by Appendix J to 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. [The proposed amendment will not] involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a one-time extension of the 40 [plus or minus] 10 month, Type A test interval as contained in Surveillance Requirement 4.6.1.2.a. The purpose of the Type A test is to ensure that leakage from the primary containment does not exceed allowable leakage rate values specified in the Tech Specs (VCSNS limit is 0.75 La which equates to 0.15 percent per day). Testing pursuant to SR 4.6.1.2.a was last satisfactorily completed on 12/88 at which time the actual measured leak rate was well below the required value of the plant's Technical Specifications. SCE&G therefore concludes that extending the surveillance interval would not cause a significant increase in the probability or consequences of an accident previously evaluated.
2. [The proposed amendment will not] create the possibility of a new or different kind of accident from any previously analyzed. No new accident scenarios are created by the proposed change because the one-time extension affects only the test frequency and does not affect the physical containment structure, the penetrations or the facility. Previous Type A test results have shown the leak rates have remained well below the 0.75 La (0.15 percent per day) limit. Because the leakage limit has not been compromised, the requested extension of the test interval will in no way create the possibility of a new or different kind of accident from any previously analyzed.
3. [The proposed amendment will not] involve a significant reduction in the margin of safety. The test data (test data has 95% upper confidence level) from the previous two Type A tests, 0.094 percent per day (Type A test performed in October 1984) and 0.1057 percent per day (Type A test performed in December 1988), levels (acceptance criteria for VCSNS Type A tests is 0.15 percent per day). Based on the previous measured leakage rates combined with the design modification and process control administrative procedures, the one-time extension of the 40 [plus or minus] 10 month, Type A, test interval would not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: This amendment request involves Technical Specification (TS) 3/4.7.1, "Turbine Cycle - Safety Valves," and addresses two separate changes. First, TS 3/4.7.1.1 contains provisions that were included for use in two-loop operation. As it is unlikely that two-loop operation will be approved, South Carolina Electric & Gas (SCE&G, the licensee) has requested that these provisions be removed. Second, the amendment requests that the setpoint tolerance on the four highest-set main steam safety valves (MSSV) be increased from plus or minus one percent to plus or minus three percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The effects of the requested change was [sic] examined with respect to each event described in the RTSR [Reload Transition Safety Report] (non-LOCA [loss of coolant accident] events), the small and large break LOCA accidents, and the Steam Generator Tube Rupture Event. The examination revealed that the conclusions reached for all events described in the RTSR remained valid and the results of the FSAR [Final Safety Analysis Report] accident analyses were not impacted.
2. The amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested change does not represent a design change in that all design limits are maintained and the physical design of all systems are [sic] unaffected. Therefore, the potential for malfunction or failure of any component or system as a result of the requested change remains unaffected.
3. The amendment request does not involve a significant reduction in a margin of safety. The requested change does not affect the minimum or maximum pressures experienced by the main steam system during any licensing basis event and remains consistent with the margin of safety as described in the bases of the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Figure 3.1-3 to incorporate the more negative boron worths into Modes 3 and 4. In addition, the amendment would make an administrative revision, replacing a reference to the Peaking Factor Limits Report (PFLR) with a reference to the Core Operating Limits Report (COLR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Shutdown Margin requirements reflect the use of a more negative boron worth as a bounding assumption in the Boron Dilution Analyses. In combination with the high flux at shutdown alarm set at twice background, the proposed change ensures that the operator will have at least 13.4 minutes from the alarm to recognize and terminate an uncontrolled dilution even before shutdown margin is lost. Thus, there will be no increase in the probability or consequences of the Boron Dilution Accident because current margin to criticality will be maintained.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature and does not, therefore, involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No safety-related equipment, safety function, or methods of plant operations will be altered as a result of the proposed change to Figure 3.1-3. Therefore, the higher boron concentrations (the end result of the higher shutdown margin requirements) that will be maintained during the portions of the fuel cycle while in Modes 3 and 4 do not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature and does not in any way create the possibility of an accident which is new or different from any accident previously evaluated. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR).

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to Figure 3.1-3 revises the required shutdown margin as a function of RCS boron concentration for Modes 3 and 4 such that the operator will have at least 13.4 minutes and 13.6 minutes, respectively, from receipt of a high flux at shutdown alarm to recognize and terminate an uncontrolled dilution event before shutdown margin is lost. This will maintain the current margin to criticality, as reflected in the FSAR analysis of the Boron Dilution Event, and thus preserves the margin of safety as defined in the bases for the Shutdown Margin Technical Specification.

The proposed revision to change "PFLR" to "COLR" in Technical Specification Basis 3/4.2.1 is administrative in nature. The change simply deletes a reference to an obsolete report (PFLR) and references the report which replaced it (COLR). The change does not affect the margin of safety currently provided by the Technical Specifications.

Therefore, based on the above considerations, SCE&G has determined that the proposed changes do not involve any significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 4, 1991

Description of amendment request: The proposed change would modify Technical Specification (TS) 4.7.7 and the associated Bases 3/4.7.7 in accordance with Generic Letter (GL) 90-09. In addition, the Reject line in figure 4.7-1, "Sampling Plan for Snubber Functional Test," and all references to it would be removed from the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. [The proposed amendment will not] involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow extension of subsequent visual surveillance intervals based on the number of unacceptable snubbers found during the previous inspection, in accordance with the guidance contained in GL 90-09. This change will not involve any change to the actual surveillance requirements. There will be no increase in the probability of failure of components and sytems [sic] that would result from extending the visual surveillance interval. Reliability is ensured by functional testing which provides a 95 percent confidence level that 90 to 100 percent of the snubbers will operate within their specified acceptance limit.

The Reject line, developed using Wald's Sequential Probability Ratio Plan, assumes that the sample is totally homogeneous, and that the failure in the total population is in the same ratio as the failures observed in a given sample. This is not correct when functionally testing snubbers in nuclear power stations. Snubbers cannot be considered a homogeneous population, since the sampling for function testing includes various configurations, different environmental conditions, different sizes, capacities and types of snubbers, and the sample is weighted to include more snubbers from severe service areas.

2. [The proposed amendment will not] create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change will not make physical alterations to any plant system, structure or component, will not change the method by which a safety-related system performs its function, and will not change the way the surveillance requirement is performed. The proposed change will only allow extension of a subsequent snubber visual inspection if the number of unacceptable snubbers found during a given inspection is equal or less than [sic] the number of unacceptable snubbers given in the new SNUBBER VISUAL INSPECTION INTERVAL table. Deletion of the Reject line from Figure 4.7-1 does not contribute to any new or different kind of accident.

3. [The proposed amendment will not] involve a significant reduction in a margin of safety.

The proposed change will not alter existing surveillance requirements; therefore, the reliability, ensured through functional testing, will not be degraded. Visual examinations complement the function testing of snubbers and provide additional confidence of snubber reliability. VCNS operating experience indicates that existing maintenance programs are effective in minimizing snubber failures, as demonstrated by the low snubber failure rate experienced. During VCNS' most recent inspection, eight snubbers were found unacceptable by visual inspection out of a total population of 1127 TS snubbers. These unacceptable snubbers were subsequently tested, root cause anlyses [sic] were performed, corrective actions were taken, and were later declared acceptable [sic].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, P.O. Box 764, Columbia, South Carolina 29218

NRC Project Director: Elinor G. Adensam

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: November 30, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS's) related to the low pressure block permit setpoints that appear in the Technical Specification Section 3/4.3.2.2. The amendment request specifically proposes to increase the steam and feedwater rupture control system (SFRCS) main steam (MS) low pressure block permit setpoint from 700 psig to 750 psig and increase the steam pressure setpoint where the block permit is automatically removed from 750 psig to 800 psig.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit 1 in accordance with these changes would:

1a.) Not involve a significant increase in the probability of an accident previously evaluated because the pressure switches associated with the change do not initiate any accident previously analyzed. The pressure switches only allow a manual bypass function for the MS low pressure trip switches to be activated by the operators. Additionally, the potential for an inadvertent SFRCS MS low pressure trip during plant heatup or cooldown operations will be reduced.

1b.) Not involve a significant increase in the consequences of an accident previously evaluated because the pressure switches associated with the change do not play any mitigating role in any accident previously analyzed. The pressure switches only allow a manual bypass function for the MS low pressure trip switches to be performed by the operators during controlled evolutions during Mode 3. Additionally, the potential for an inadvertent SFRCS MS low pressure trip during plant heatup or cooldown operations will be reduced. This change does not alter the radiological consequences of the bounding main steam line break accident evaluated in the USAR.

2a.) Not create the possibility of a new kind of accident from any accident previously evaluated because the setpoint change does not alter the safety function of SFRCS or any associated systems. the revised setpoints provide the same function as before and do not introduce failure modes that are not bounded by existing analyzed events.

2b.) Not create the possibility of a different kind of accident from any accident previously evaluated because the setpoint change does not alter the safety function of SFRCS or any associated systems. The revised setpoints provide the same function as before and do not introduce failure modes that are not bounded by existing analyzed events.

3.) Not involve a significant reduction in a margin of safety because the change minimizes the possibility of an unnecessary actuation of the AFW system during plant cooldown and heat-up operations. The change in the setpoints has no impact upon the availability of SFRCS during plant power operations and does not appreciably increase the time period in Mode 3 where the SFRCS main steam low pressure trip signal is blocked.

The Commission's staff has reviewed the licensee's analyses, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied.

Accordingly, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 31, 1991

Description of amendment request: The proposed change to the NA-1&2 TS would modify the visual snubber inspection program to be consistent with the guidance of the NRC's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990. The purpose of the visual inspection is the observation of the condition of installed snubbers to identify those that are damaged, degraded, or inoperable as caused by physical means, leakage, corrosion or environmental exposure. Functional testing is performed to assure that there is a 95% confidence level that 90% to 100% of the snubbers will operate within their specified performance limits. The visual inspection complements the functional testing and provides additional confidence in snubber operability.

The proposed change would allow the implementation of an alternate inspection schedule for visual inspections of snubbers based on the number of unacceptable snubbers found during the previous inspection, the total population or category size for each snubber type, and the previous inspection schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

...[The] proposed changes provide a visual inspection program consistent with the guidance of the NRC's Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990, which will continue to provide assurance that snubber reliability will be maintained. Operation of the North Anna Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the [Updated Final Safety Analysis Report] because the snubber functional inspection program will not be changed and will continue to provide a 95% confidence level that at least 90% of the snubbers will be operable at any time. The modified visual inspection program will continue to enhance the reliability achieved by the functional testing. This confidence level (reliability) is equivalent to that provided by the existing snubber inspection requirements. Plant equipment and system operation are not being modified or changed.
2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. By maintaining the level of confidence (reliability) with the proposed snubber inspection program there is no impact on plant design or operation. Plant equipment and system operation are not being modified or changed. Therefore, no new accidents could be created from those previously analyzed in the safety analysis report.
3. Involve a significant reduction in the margin of safety. No physical plant modifications, changes in plant operations, or changes in accident analysis assumptions are being made. The proposed snubber inspection requirements will continue to provide the same level of reliability as the existing inspection requirements. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of amendment request: February 6, 1991

Description of amendment request: The Main Control Room (MCR) and Emergency Switchgear Room (ESGR) Air Conditioning (AC) System was determined to be undersized due to the unrecognized addition of incremental heat loads in these areas over an

extended period of time. To allow for continued plant operation, interim modifications were completed on the MCR and ESGR AC System in 1989. These modifications provided the required cooling and met design basis assumptions. The modifications included: (1) the addition of a redundant motor on each of the four ESGR air handling units (AHUs), (2) an alternate power supply for the swing chiller, and (3) the incorporation of interim equipment operating restrictions into the Technical Specifications.

In order to return the system to two 100% redundant trains and provide operational flexibility, additional modifications (system upgrades) have to be made. The Surry Unit 1 AHUs were replaced with larger capacity units during the 1990 refueling outage. The Surry Unit 2 AHUs will be replaced with larger capacity units during the 1991 refueling outage. After the eight AHUs (four per unit) are replaced by the end of the Unit 2 refueling outage, the MCR and ESGR air conditioning system will be restored to two 100% redundant trains. Subsequent modifications to install additional chiller capacity are scheduled as non-outage work following the Unit 2 refueling outage. The schedule for installation of this additional chiller capacity has not yet been finalized, although it is the licensee's intention to initiate this activity late in 1991 or early 1992. After completion of each phase of the modification, a Technical Specification change will be necessary to reflect the current condition of the MCR and ESGR air conditioning system.

This proposed Technical Specification change provides the necessary operation restrictions and action statements required for continued interim operation. This condition will exist until the additional safety-related chiller capacity is installed. The proposed Technical Specification removes the 6-hour action statement for the Unit 2 ESGR AHUs and the 7-day action statement for the redundant motors on the Unit 2 ESGR AHUs consistent with the previous Technical Specification change made for Surry Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specification change against the criteria of 10 CFR 50.92 and has concluded that the interim modification and the Technical Specification change as proposed [do] not pose a significant hazards consideration. Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Replacement of the Unit 2 Air Handling Units with larger capacity Air Handling Units (AHU) restores the Unit 2 portion of the Main Control Room and Emergency Switchgear Room AC system to the original design capability. Therefore, those interim operating restrictions applicable to the Unit 2 AHUs are no longer necessary. There is no increase in the probability or consequences of any previously evaluated accident.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The modification returns the Unit 2 AHUs to the original design capability. Therefore, the interim operating restrictions are no longer necessary and removal of those restrictions does not create a new or different accident from those previously evaluated.
3. Involve a significant reduction in a margin of safety. The larger capacity Unit 2 AHUs restore the Main Control Room and Emergency Switchgear Room AC system to the original design condition. Therefore, eliminating the interim operating restrictions on the Unit 2 AHUs does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of amendment request: February 15, 1991

Description of amendment request: The proposed one-time Technical Specification (TS) change would extend the interval for the Surry, Unit 2 low pressure turbine blade inspection. The current TS require 100% inspection of the blades every 5 years. The proposed one-time TS change would defer inspection of the above-cited blades from the April 1991 Unit 2 refueling outage to the 1993 Unit 2 refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Virginia Electric and Power Company has reviewed the proposed Technical Specification change against the criteria of 10 CFR 50.92 and has concluded that the Technical Specification change as proposed does not pose a significant hazards consideration. Specifically, operation of the Surry Power Station in accordance with the proposed change will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. Because the low pressure turbine blade inspections will be performed well within the manufacturer's recommended inspection interval there is no significant increase in the probability of a blade failure occurring that could result in a plant transient. The proposed blade inspection interval is consistent with the operational time based inspection requirements for the turbine's disks, which are a critical component for turbine missile generation. In addition, since the low pressure turbine blades are not considered a contributor to turbine missiles that could affect safety-related equipment, the extended inspection interval does not impact the probability or consequences of any previously evaluated accident.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated. Extending the inspection interval for the low pressure turbine blades does not significantly increase the probability of a turbine blade failure and, therefore does not generate any additional accident precursors. Turbine missiles have been evaluated and the blade components are not considered of sufficient mass to penetrate the turbine casing and affect safety-related equipment. Therefore, a new or different accident from those previously evaluated has not been created.
3. Involve a significant reduction in a margin of safety. The low pressure turbine blades will be inspected well within the manufacturer's recommended inspection interval. Therefore, the possibility of turbine blade failure occurring that could result in a plant transient due to blade failure will not increase significantly. The low pressure turbine blades are not considered to be a source of a turbine missile that could affect safety-related equipment. Therefore, extending the inspection interval will not significantly reduce the margin of safety, (i.e., change the probability of a turbine missile damaging a safety-related piece of equipment).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 21, 1990, as supplemented February 8, 1991

Description of amendment request: The proposed Technical Specification change will increase boron concentration in the refueling water storage tank (RWST) to a range of 2300 - 2500 ppm from the current range of 2000 - 2200 ppm. In addition, the minimum boron concentration in the safety injection accumulators would be increased to 2250 ppm from the present value of 1950 ppm. These limits apply to Cycle 12 and subsequent cycles for Unit 1 and to Cycle 11 and subsequent cycles for Unit 2. The proposed change is required in order to meet the increased cycle energy requirements associated with longer cycles and higher load factors. The provisions of the proposed change must be in place prior to reloading of fuel for Unit 2, which includes the addition of eight fresh fuel assemblies, thus increasing the previously planned addition of 56 fuel assemblies to 64 assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant hazards consideration because operation of Surry Units 1 and 2 in accordance with this change would not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated because appropriate design constraints were analyzed for changes to T.S. 3.2.F, 3.2 [(Bases)], 3.3.A, 3.4.A, 3.10.A, 3.10 [(Bases)], and 5.4.C; none were found to be more limiting than those currently documented in the [Updated Final Safety Analysis Report]. Subcriticality is maintained following a [loss of coolant accident] by a combination of void formation, control rod insertion and soluble boron. The cold zero power boron critical concentration is determined such that General Design Criterion (GDC) 26 is also met. A boron dilution event at refueling and cold shutdown conditions is precluded by lockout of the primary grade water flow path. A boron dilution event leading to a complete loss of shutdown margin at intermediate or hot shutdown is precluded by the establishment of an administrative shutdown margin requirement providing a minimum available time for corrective operator action. The analysis of the boron dilution event at reactor critical and at power meets the criteria of the Standard Review Plan (SRP). Boron precipitation does not occur for low concentration solutions. The electrical equipment subject to chemical spray qualification are not adversely affected by the higher boron concentration. Finally, the results of containment spray and sump pH analyses were found to be acceptable.
2. create the possibility of a new or different kind of accident from any accident previously identified because the proposed changes to T.S. 3.2.F, 3.2 [(Bases)], 3.3.A, 3.4.A, 3.10.A, 3.10 [(Bases)], and 5.4.C, do not involve any alterations to the physical plant which would introduce any new or unique operational modes or accident precursors. Procedural changes are limited to setpoint values, timing requirements, or lockout of valves.
3. involve a significant reduction in a margin of safety. A boron dilution event at refueling and cold shutdown conditions is precluded by lockout of the primary grade water flow path. This represents an increase in the margin of safety relative to current practice. A minimum of 15 minutes from initiation of dilution to loss of shutdown margin are available for operator response to terminate an unplanned boron dilution during operating conditions other than refueling and cold shutdown. This maintains the margin of safety relative to current practice. The requirements of GDC 26 are met with the higher boron concentration. The reactivity and boron concentration uncertainties are unchanged. Finally, the refueling K-eff remains unchanged at 0.95. Therefore the margin of safety is unchanged, or is increased, by the proposed increase in the boron concentration.

Therefore, pursuant to 10 CFR 50.92, based on the above considerations, it has been determined that these changes do not involve a significant safety hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 21, 1990 (change 1), September 20, 1990, and as amended on November 20, 1990 (change 2), and October 4, 1990 (change 3).

Brief description of amendment: This amendment: (1) replaces the specific requirements of Palisades Plant Technical Specification (TS) 4.51, Integrated Leakage Rate Tests (ILRT), with a general statement that the ILRT will meet the requirements of 10 CFR 50, Appendix J, type A test or approved exemptions. Also proposed the signal TS 4.5, Containment Tests, basis to reflect that the signal to close the containment isolation vales for the component cooling lines has been changed from a safety injection signal to a containment high pressure; (2) modifies TS Table 3.6.1, Containment Penetrations and Valves, to reflect physical changes effected to the steam generator bottom and surface blowdown lines during the 1990 refueling outage; and, (3) modifies TS 5.3.1a, Primary Coolant System, to remove specific references to ASME codes and addenda that currently exist; and instead, to reference the Primary Coolant System (PCS) description contained in the Final Safety Analysis Report (FSAR) Section 4.2, Design Basis.

Date of issuance: February 11, 1991

Effective date: February 11, 1991

Amendment No.: 135

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45880); December 28, 1990 (55 FR 53087); and November 28, 1990 (55 FR 49448) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 2, 1990 and June 13, 1990 (as revised November 9 and December 7, 1990 and January 24, 1991).

Brief description of amendment: This amendment: (1) revised the description of the neutron monitoring system to reflect system upgrades performed this outage, and (2) broadens the operating band at which safety injection tank level must be maintained. Additionally, a new SIT surveillance requirement, and a revised basis section have been incorporated.

Date of issuance: February 15, 1991.

Effective date: February 15, 1991.

Amendment No.: 136

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: December 24, 1990 (55 FR 52914) and December 28, 1990 (55 FR 53374). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 31, and September 19, 1990; as amended October 3, and December 28, 1990.

Brief description of amendment: This amendment allows the use of both the ANFP (Advanced Nuclear Fuels) and the XNB (Exxon Nuclear), departure from nucleate boiling correlation (DNB) for the Cycle 9 fuel reload. This amendment also includes revisions to the reactor protective system set points, limiting conditions for operation (LCO), Bases, and references, which are required for Cycle 9 power operations. These changes are a result of changes to plant equipment, fuel design, and the fuel management scheme for Cycle 9.

Date of issuance: February 20, 1991.

Effective date: February 20, 1991.

Amendment No.: 137

Provisional Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1990 (55 FR 45880) and December 20, 1990 (55 FR 52230) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: August 21, 1990

Brief description of amendment: This amendment revises Palisades Plant Technical Specification Table 2.3.1, Reactor Protective System Trip Setting Limits, to delete wording descriptive of the steam generator low water level trip limit that does not apply to the replacement steam generators.

Date of issuance: February 22, 1991

Effective date: February 22, 1991

Amendment No.: 138

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: October 17, 1990 (55 FR 42094) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 21, 1990

Brief description of amendments: The amendments modify the Technical Specifications to increase the surveillance interval for weighing ice condenser ice from 9 months to 18 months and to increase the required ice bed weight.

Date of issuance: February 21, 1991

Effective date: February 21, 1991

Amendment Nos.: 83 and 77

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 18, 1991 (56 FR 2051) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 21, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: April 19, 1990

Brief description of amendment: The amendment revises the Appendix A Technical Specifications for the reactor coolant system (RCS) heatup and cooldown limit curves. Specifically, the amendment incorporates revised Figures 3.4-2 and 3.4-3 which provide pressure-temperature (P-T) limits for the operation of the RCS during heatup, cooldown, criticality, and hydrotest. The

revised curves are applicable for operation up to 9.5 effective full-power years (EFPY), and have been developed consistent with the recommendations of Revision 2 to Regulatory Guide 1.99. In addition, the amendment revises Bases Section 3/4 4.9 to incorporate the revised methodology used to develop Figures 3.4-2 and 3.4-3.

Date of issuance: February 12, 1991

Effective date: February 12, 1991

Amendment No. 157

Facility Operating License No. DPR-66: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21969) The Commission's related evaluation of the amendment is contained in a letter to the licensee dated February 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 11, 1990

Brief description of amendment: The amendment to the Arkansas Nuclear One, Unit 2 (ANO-2) Technical Specifications (TS) revises Table 3.3-10 to provide a clarification of the minimum number of channels required to be operable from "1" to "1 per valve" for the Pressurizer Safety Valve Acoustic Position Indication and Pressurizer Safety Valve Tail Pipe Temperature.

Date of issuance: February 12, 1991

Effective date: 30 days from the date of issuance.

Amendment No.: 115

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 891) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 31, 1989, as supplemented March 30 and August 10, 1990 (partial response)

Brief description of amendment: The amendment revised Technical Specification 3.4.9.1, including Figures 3.4-2, 3.4-3 and 3.4-4 by providing reactor coolant system heatup and cooldown pressure/temperature curves for operation up to 15 effective full power years. The application also proposed changes for the low temperature overpressure protection. These changes are still under NRC review and were not included with this amendment.

Date of issuance: February 7, 1991

Effective date: February 7, 1991

Amendment No.: 133

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47570) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 7, 1990, as supplemented September 14 and December 13, 1990.

Brief description of amendment: The amendment modifies the Technical Specifications having cycle-specific parameter limits by replacing the values of those limits with a reference to a Core Operating Report.

Date of Issuance: February 20, 1991

Effective date: February 20, 1991

Amendment No.: 147

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21971) The supplemental letters dated September 14 and December 13, 1990, provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: November 6, 1990

Brief description of amendment: This amendment revises Table 3.6.2c of Technical Specification 3.6.2 and associated Bases to incorporate a revised set point for isolation of the Emergency Cooling System on high steam flow. This revision is necessary to correct an error which was discovered in an equation used to calculate the current set point.

Date of issuance: February 11, 1991

Effective date: February 11, 1991

Amendment No.: 123

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53073) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northern States Power Company, Dockets Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 13, 1990

Brief description of amendments: The amendments revise the Technical Specifications by adding a reference, WCAP-10924-P-A, Volume 1, Addendum 4, "Westinghouse Large-Break LOCA Best-Estimate Methodology," August 1990, to Section 6.7.A.6.b of the Technical Specifications.

Date of issuance: February 11, 1991

Effective date: February 11, 1991

Amendment Nos.: 93 and 86

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 14, 1990 (55 FR 47572) The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated February 11, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 2, 1990

Brief description of amendment: The amendment clarifies and defines Emergency Core Cooling System requirements when the plant is in the cold shutdown condition.

Date of issuance: February 13, 1991

Effective date: February 13, 1991

Amendment No.: 168

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49454) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: February 23, 1990 and supplemented by letters dated June 28, 1990 and August 8, 1990. The June 28, 1990 supplemental letter is applicable to Unit 2 only. The August 8, 1990 supplemental letter did not increase the scope of the original amendment request and did not affect the staff's original no significant hazards determination.

Brief description of amendment: This amendment modified the Subcooling Margin Monitor (SMM) Technical Specifications (TSs) and included TSs for the Reactor Vessel Level Instrumentation System (RVLIS) with interim requirements. The RVLIS technical specifications include a footnote terminating the applicability of the interim action statement at the end of the Salem Unit 1 10th refueling outage (Spring 1992) when RVLIS will be upgraded. In addition, Tables 3.3-11a and 3.3-11b have been combined into Table 3.3-11.

Date of issuance: February 12, 1991

Effective date: Unit 1 is effective as of the date of issuance to be implemented prior to startup from the ninth refueling outage scheduled to begin February 1991.

Amendment No. 117

Facility Operating License No. DRP-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 1990 (55 FR 21979) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 13, 1989 and supplemented by letters dated June 29, 1990 and December 28, 1990.

Brief description of amendments: The amendments modified the Salem Unit 1 Steam Generator Surveillance Requirements to achieve consistency between the Salem 1 and Salem 2 Technical Specifications and the Westinghouse Standard Technical Specifications. The June 29, 1990 and December 28, 1990 letters did not increase the scope of the original request and did not affect the staff's original no significant hazards determination.

Date of issuance: February 13, 1991

Effective date: For Units 1 and 2, as of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment Nos. 118 and 98

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2444) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 13, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: December 21, 1990

Brief description of amendment: The amendment modifies maintenance and surveillance requirements associated with the installation of a second isolation valve on the Volume Control Tank.

Date of issuance: February 20, 1991

Effective date: February 20, 1991

Amendment No.: 142

Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 17, 1991 (56 FR 1829) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: November 14, 1990

Brief description of amendments: These amendments modify TS 3/4.7.2 regarding the minimum pressurization temperature for the San Onofre Unit No. 3 steam generators from 70° F to 90° F based on a vendor recommendation to change the reference nil ductility transition temperature. Additionally, the San Onofre Unit Nos. 2 and 3 TS 3/4.7.2 are clarified to indicate that the pressure/temperature limitation pertains only to the steam generator secondary side. Both San Onofre Unit Nos. 2 and 3 bases are revised to include a change to the reference temperature for the nil ductility transition.

Date of issuance: February 11, 1991

Effective date: February 11, 1991

Amendment Nos.: 92 and 82

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 9, 1991 (56 FR 898) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 11, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of applications for amendments: January 31, March 20, May 14, 1990, and December 28, 1990 (TS 277).

Brief description of amendments: The amendments modify Section 3.9 and 4.9, Auxiliary Electrical System, of the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Technical Specifications. The changes (1) clarify Limiting Condition for Operation (LCO) 3.9.A.1, (2) more accurately describe the 7-day fuel oil requirements for the diesel generators in LCO 3.9.A.6, (3) revise the requirements for sampling the diesel generator fuel oil in Surveillance Requirement 4.9.A.1.e, and (4) update the testing of the diesel generators in SR 4.9.A.1.a.

Date of issuance: February 12, 1991

Effective date: February 12, 1991

Amendment Nos.: 181 - Unit 1, 191 - Unit 2, 153 - Unit 3

Facility Operating Licenses Nos. DPR-33, DPR-52, and DPR-68: Amendments revised the Units 1, 2, and 3 Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30313).

The letter of December 28, 1990, contained a proposal that the year of the ASTM Standard D975 (i.e., ASTM-D975-89) appear in the surveillance requirement and in the bases. This administrative change did not alter the findings or conclusions of the previously proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 12, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 7, 1990

Brief description of amendment: The amendment revised TS 3.1.3.1 and its associated Bases to add an Action Statement covering situations where more than one digital rod position indicator per bank is inoperable. This new Action Statement avoids unnecessary plant shutdowns per TS 3.0.3, yet is consistent with the overall protection afforded by related specifications.

Date of issuance: February 1, 1991

Effective date: February 1, 1991

Amendment No.: 61

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 28, 1990 (55 FR 49458) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 1, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 29, 1990

Brief description of amendment: The amendment revised Condition 2.C.(4) of Facility Operating License DPR-43 to reflect the current titles of the referenced security manuals. The amendment also revised Technical Specifications (TS) 6.5.1.2, 6.5.3.3, and 6.6.1.b to revise the required members of the Plant Operations Review Committee and revise titles due to the recent organization change. The amendment also included several revisions that update reference titles, clarify existing specifications and correct typographical errors.

Date of issuance: February 5, 1991

Effective date: February 5, 1991

Amendment No.: 89

Facility Operating License No. DPR-43. Amendment revised the License and the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32334) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 5, 1991. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas Date of amendment request: August 24, 1990

Brief description of amendment: The amendment implements changes to the Technical Specifications as described in NRC Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program." The amendment is an improvement to the existing Technical Specifications as recommended by Generic Letter 89-01 and consistent with the Commission's Policy Statement for Technical Specification Improvements.

Date of Issuance: February 19, 1991

Effective date: February 19, 1991, to implemented within 30 days of issuance

Amendment No.: 142

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40479) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 19, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: February 23, 1989, as supplemented December 31, 1990.

Brief description of amendments: The amendments add valves to the NA-1&2 TS which do not need to be vented to the containment atmosphere nor drained of water during Type A (containment integrated leak rate) tests and the leakage rates measured by Type C tests on these valves need not be added to the Type A test results. Type C testing will continue and the measured leakage rates will be added to the sum of Type B and Type C tests in the usual manner. The amendments also identify valves that are associated with "water-filled" penetrations for which a Type C test penalty will not be added to the Type A tests results and add containment valves not previously listed to Table 3.6-1 for NA-1&2 and delete a valve incorrectly listed in TS Table 3.6-1 for NA-1.

Date of issuance: February 20, 1991

Effective date: February 20, 1991

Amendment Nos.: 143, 126

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32720) The December 31, 1990 letter provided additional information which did not alter the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: October 29, 1990, as supplemented January 18, 1991

Brief description of amendment: This amendment deletes the NA-2 License Condition 2.C.(15)(c) which required that at least once every 5 years the recirculation spray pumps inside containment be removed and inspected and the bearings be replaced, if necessary. Also, the licensee's September 14, 1979 commitment to remove and inspect the inside recirculation spray pumps inside containment for NA-1 is no longer required.

Date of issuance: February 20, 1991

Effective date: February 20, 1991

Amendment No.: 127

Facility Operating License No. NPF-7: Amendment revised the License.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53077) The January 18, 1991 letter provided additional information requested by the NRC staff and did not alter in any way the staff's initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: June 26, 1990

Brief description of amendments: These amendments delete TS 3.15, "Containment Vacuum System" and the associated bases from the Surry TS. For clarification, the time requirements for the reactor to be brought to the hot shutdown condition and the cold shutdown condition are specified in TS 3.8.B.

Date of issuance: February 7, 1991

Effective date: February 7, 1991

Amendment Nos. 152 and 149

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32333) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 7, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for

amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 5, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 8, 1991

Description of amendment request: This amendment revises Technical Specifications 4.1.1.1.1, 4.1.1.2, 3.1.3.1, 4.1.3.1.1, 4.1.3.1.2, 4.1.3.1.3, 3.1.3.3, 4.1.3.3.1, 4.1.3.3.2, 3.1.3.4, 4.1.3.5, 3.10.1.1, and 4.10.1.2. The revision consists of a footnote which excludes the applicability of the Technical Specifications to the center Control Element Assembly (CEA) for Cycle 10. Technical Specifications 3.1.3.6 and 4.1.3.6 do not specifically deal with single CEAs. However, a footnote was added to permit the exclusion of the center CEA from the determination of CEA Bank 5 position. The changes to Technical Specifications 3.2.2.1, 4.2.1.3, 4.2.2.1.3, 4.2.2.3, 3.2.3, and 4.2.3.3. consist of a footnote which permits exclusion of the center CEA from the stated full length CEA insertion limit. This amendment excludes the Unit 1 center CEA from the operability and alignment requirements of the Technical Specifications for the remainder of the

Unit 1, Cycle 10, operation. The Commission was requested to handle the proposed changes on an emergency basis.

Date of issuance: February 20, 1991
Effective date: February 20, 1991
Amendment No.: 151
Facility Operating License No. DPR-53. Amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 20, 1991.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for Licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: January 30, 1991, as supplemented on February 11, 1991 and February 13, 1991
Brief description of amendments: These amendments to the Technical Specifications temporarily exclude two containment pathways from the requirement to perform Type C leak testing in accordance with 10 CFR 50, Appendix J, during current operating cycles Z1C12 and Z2C12, respectively. In addition, an administrative change to indicate the deletion of Surveillance Requirement 4.10.1.A.1.b in Amendment Nos. 90 and 80 for Units 1 and 2, respectively, has been added to the Technical Specifications.
Date of Issuance: February 15, 1991
Effective date: February 15, 1991, not to exceed the next refueling outage
Amendment Nos.: 121 and 110
Facility Operating License Nos. DPR-39 and DPR-48. These amendments revise the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of these amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 15, 1991.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

NRC Project Director: Richard J. Barrett

Dated at Rockville, Maryland, this 27th day of February 1991.

For the Nuclear Regulatory Commission
Steven A. Varga,
Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-5130 Filed 3-5-91; 8:45 am]
BILLING CODE 7590-01-D

[Docket No. 50-341]

Detroit Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-43, issued to Detroit Edison Company (the licensee), for operation of Fermi-2 located in Monroe County, Michigan.

The proposed amendment would eliminate the requirement for use of the Rod Sequence Control System (RSCS) and decrease the power level set point above which the Rod Worth Minimizer (RWM) system would no longer be required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change to delete the RSCS and reduce the RWM low power set point from 20% to 10% power does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated

Deleting the RSCS and changing the low power set point of the RWM has no effect on the probability of any previously evaluated accident because these systems play no role in any accident initiating mechanism. These systems act to mitigate the consequences of the rod drop accident (RDA); however, the probability of an RDA is dependent only on the control rod drive system and mechanisms themselves, and not in any way on the RSCS or RWM. Therefore, the change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of an RDA as evaluated will not be affected by this modification. The BWR Owners' Group sponsored study (NEDE-24011-P-A) of the RDA has concluded that the RSCS is unnecessary. This study was approved by the NRC in a safety evaluation (SE) dated December 27, 1987.

The RSCS duplicates the function of the RWM. So long as the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out-of-service, the proposed Technical Specifications (TS) require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the technical staff. The verification process is controlled procedurally.

In addition, to further minimize control rod movement at low power with the RWM out-of-service, the proposed TS will permit only one plant start-up per calendar year with the RWM out-of-service prior to or during the withdrawal of the first twelve control rods. The above substantiates the conclusion that there will be no increase in the consequences of an RDA as a result of eliminating the RSCS. There will also be no increase in the consequences of an RDA due to lowering the RWM set point from 20% to 10% power. The effects of an RDA are more severe at low power levels and are less severe as power level increases. Although the original calculations showed that no significant RDA could occur above 10% power, the NRC required that the generic BWR TS be written to require operation of the RWM below 20% power in order to account for uncertainties in the analysis. Recently, more refined calculations conducted for the NRC have shown that even with the maximum single control rod position error, and most multiple control rod error patterns, the peak fuel rod enthalpy reached during an RDA from these control rod patterns would not exceed the NRC limit of 280 cal/gm for RDAs above 10% power, confirming the

original GE analyses. Hence, lowering the RWM set point from 20% to 10% will not result in an increase in the consequences of an RDA. The previously referenced NRC safety evaluation has concluded that this RWM set point reduction is acceptable.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the RSCS and RWM cannot cause or prevent an accident. They function to minimize the consequences of an RDA. The RDA is evaluated in the UFSAR and the effect of this proposed change on the analyses is discussed in Item (1) above. Elimination of the RSCS and lowering the RWM set point will have no impact on the operation of any other system, and hence would not contribute to a malfunction in any other equipment nor create the possibility for an accident to occur which has not already been evaluated.

(3) Involve a significant reduction in a margin of safety

Elimination of the RSCS will not lower the margin of safety for the reasons discussed in Item (1) above and summarized below:

(a) An extensive NRC study has determined that the possibility of an RDA resulting in unacceptable consequences is so low as to negate the requirement for the RSCS.

(b) Recent calculations have determined that the consequences of an RDA are acceptable above 10% power.

(c) The RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM.

(d) To ensure that the RWM will be in service when required, the RWM TS will be revised to allow only one start-up per calendar year with the RWM out-of-service prior to or during the withdrawal of the first twelve control rods. If the RWM is out-of-service below 10% power, control rod movement and compliance with prescribed control rod patterns will be verified by a second licensed operator or technically qualified member of the technical staff.

There is no significant reduction in the margin of safety resulting from lowering the RWM set point from 20% to 10% power because calcuations have shown that even with the maximum single control rod position error, and most multiple error patterns, the peak fuel rod enthalpy during an RDA from these patterns would not exceed the NRC limit (280cal/gm) above 10% power.

In summary, GE has provided technical justification for the proposed changes in the Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes.

The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SE issued December 27, 1987, to J.S. Charnley of General Electric.

The proposed changes are consistent with those approved in the NRC SE and the guidelines setforth therein. Therefore, there is no significant reduction in a margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days afte the date of publication of this notice will be considered in making any final determination. The Commission will not mormally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 5, 1991, the license may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is avialble at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Monroe County Library System, 3700 S. Custer Road, Monroe County, Michigan. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must saftisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to relv to establish

those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one conention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determiantion is that the amendment involves a signficant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to L.B. Marsh: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 18, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48226.

Dated at Rockville, Maryland, this 26th day of February 1991.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-5247 Filed 3-5-91; 8:45 am]

BILLING CODE 7590-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2479 & #2480]

Declaration of Disaster Loan Area; New Jersey et al

Passaic County and the contiguous counties of Bergen, Essex, Morris, and Sussex in the State of New Jersey and Orange and Rockland Counties in the State of New York constitute a disaster area as a result of damages from a fire which destroyed the Meyers Building Complex on Main Street in the City of Paterson on January 17, 1991. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on April 8, 1991 and for economic injury until the close of business on November 5, 1991 at the address listed below: Disaster Area 1 Office, Small Business Administration, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 247905 for the State of New Jersey and 248005 for the State of New York. For economic injury the numbers are 724500 for New Jersey and 724600 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: February 5, 1991.

Susan Engeleiter,

Administrator.

[FR Doc. 91-5186 Filed 3-5-91; 8:45 am]

BILLING CODE 8025-01-M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Nags Head Woods located in Nags Head, North Carolina is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other

transfer of the property specified herein may be mailed or faxed to the RTC until June 4, 1991.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Sharon Herron, Resolution Trust Corporation, 100 Colony Square, Suite 2100, Box 68, Atlanta, GA 30361, (404) 881–4941, Fax (404) 881–4995.

SUPPLEMENTARY INFORMATION: The property known as Nags Head Woods, located west of U.S. 158 and adjacent to Roanoke Sound on Bodie Island and in Nags Head, Dare County, North Carolina is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property is located within Unit NC–02 of the Coastal Barrier Resources System. The property has been designated as a National Natural Landmark and contains 218 acres of wetlands, a 126-acre, unique maritime forest, and habitat for several North Carolina and Federally listed rare and endangered species of plants and animals.

Property size: 389.82 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before June 4, 1991 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest area:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organization" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 926 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted to Sharon Herron at the above address and in the following form:

Notice of Serious Interest

Re: Nags Head Woods

Federal Register Publication Date: _____

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: February 28, 1991.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–5200 Filed 3–5–91; 8:45 am]

BILLING CODE 6714–01–M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget (OMB).

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4B, Chattanooga, TN 37402; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Survey of Residential Wood Energy Consumption in the Southeastern United States.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals or households, farms.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 3744.

Estimated Total Annual Burden Hours: 1248.

Estimated Average Burden Hours Per Response: .33.

Need For and Use of Information: The Southeastern Regional Biomass Energy Program, managed under contract from the Department of Energy by TVA, will use the information to determine residential fuelwood consumption and acquisition characteristics in the southeastern United States.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 91–5184 Filed 3–5–91; 8:45 am]

BILLING CODE 8120–02–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Establishment of Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Secretary of Transportation has determined that it is in the public interest to utilize the Intelligent Vehicle-Highway Society of America (IVHS-America) as an advisory committee in connection with the performance of duties imposed on the Department by law.

DATES: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, Federal Highway Administration, HTV–10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2197. Office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Costantino or Mr. Mark Norman, IVHS-America, 1776 Massachusetts Avenue, NW., Fifth Floor, Washington, DC 20036, (202) 857–1202.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, the Department of Transportation's regulation on advisory committees, 49 CFR part 95, Department of Transportation Order 1120.3A, and after consultation with the GSA, the Secretary of Transportation has determined that it is in the public interest to utilize the IVHS-America will act in an advisory capacity to the Federal Highway Administration National Highway Traffic Safety Administration, Urban Mass Transportation Administration and the Research and Special Programs Administration by providing advice and recommendations regarding their respective Intelligent Vehicle-Highway

System (IVHS) program needs, objectives, plans and progress. These four administrations are the sponsors for the committee.

The IVHS-America will serve as a national forum and develop recommendations on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The committee will assure the coordination of the IVHC activities carried out by these four administrations with related activities conducted outside the Department.

The Federal Highway Administration will serve as the lead agency for the purpose of administering the committee's activities and providing the reports and recommendations developed by the committee to other Departmental elements.

The IVHS-America is a nonprofit corporation (tax-exempt under 26 U.S.C. 501(c)(3)) established (1) to promote and enhance public safety and community welfare by fostering research, development, and implementation of plans and programs to reduce motor vehicle deaths and injuries and improve mobility and (2) to promote and advance a safer, more economical, energy efficient and environmentally sound highway transportation system through research, development, and implementation of advanced technology.

The committee is authorized to establish an Executive Committee, a Coordinating Council, and working groups from the membership of IVHS-America. The IVHC-America is deemed utilized as an advisory committee when it provides consensus advice or recommendations to DOT officials on DOT policy and regulations. Components of IVHS-America are not utilized as advisory committees when they deliberate on other matters, including those relating to the administration of IVHS-America. The DOT officials will not participate in the Executive Committee of IVHS-America or its Coordinating Council when they are acting purely for internal organizational purposes. The Executive Committee shall formally transmit all recommendations of the utilized committee to the Federal Highway Administration the lead agency.

Authority: 5 U.S.C. App. 2; 23 U.S.C. 315; 49 CFR 1.48 and 95; 41 CFR 101-6; DOT Order 1120.3A

Issued on: March 1, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91-5283 Filed 3-5-91; 8:45 am]

BILLING CODE 4910-22-M

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The FHWA announces that the Intelligent Vehicle-Highway Society of America (IVHS America) will hold its first meeting on March 17 through 20, 1991. The IVHS America will provide a forum for national discussion and recommendations on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The Charter for the utilization of IVHS America as an advisory committee within the meaning of section 3(2)(C) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, as amended (Pub. L. 92-463), was approved by the General Services Administration on February 28, 1991. This Charter will establish the Executive Committee and the Coordinating Council of IVHS America as an advisory committee under the FACA when they provide advice or recommendations to DOT officials on IVHS policies and programs.

DATES: The Coordinating Council will meet on March 17, 1991 (Sunday) from 10:30 a.m. to 1 p.m., e.t.; the Executive Committee will meet on March 20, 1991 (Wednesday) from 2 p.m. to 3:30 p.m., e.t. These two sessions are open to the public without charge under the provisions of the FACA. As initial meetings, these sessions are expected to focus on organizational issues and functions. The remainder of the IVHS meetings will consist of a series of presentations on a variety of IVHS technologies and are subject to prior registration requiring payment of registration fees.

ADDRESSES: Hyatt Regency at Reston Town Center in Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, Federal Highway Administration, HTV-10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202)366-2197, office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Constantino or Mr. Mark Norman, IVHS America, 1776 Massachusetts Avenue, NW., Fifth floor, Washington, DC 20036, (202) 857-1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: February 28, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91-5284 Filed 3-5-91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0988.

Form Number: 8609 and Schedule A (Form 8609).

Type of Review: Revision.

Title: Form 8609, Low-Income Housing Credit Allocation Certification; Schedule A (Form 8609), Annual Statement.

Description: Owners of residential low-income rental buildings may claim a low-income housing credit for each qualified building over a 10-year credit period. Form 8609 is used to get a credit allocation for the housing credit agency. The form, along with Schedule A, is used by the owners to certify necessary information required by the law.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 200,000.

Estimated Burden Hours Per Response/ Recordkeeping:

	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
Form 8609	7 hrs., 53 mins.	2 hrs., 11 mins.	2 hrs., 25 mins.
8609 (Sched. A)	5 hrs., 30 mins.	1 hr., 23 mins.	1 hr., 32 mins.
Worksheet II	1 hr., 40 mins.		2 mins.

Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 2,040,600 hours.
Clearance Officer: Garrick Shear (202) 535-4297; Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880; Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 91-5190 Filed 3-5-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Dated: February 28, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0071.
Form Number: 2120.
Type of Review: Revision.
Title: Multiple Support Declaration.
Description: A taxpayer who pays more than 10%, but not more than 50%, of the support for an individual may claim that individual as a dependent provided the taxpayer attaches declarations from anyone else providing at least 10% support stating that they will not claim the dependent. This form is used to show that the other contributors have agreed not to claim the individual as a dependent.
Respondents: Individuals or households.
Estimated Number of Respondents: 11,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—7 minutes
Learning about the law or the form—2 minutes
Preparing the form—7 minutes
Copying, assembling, and sending the form to IRS—10 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/ Reporting Burden: 4,840 hours.
Clearance Officer: Garrick Shear (202) 535-4297; Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880; Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-5189 Filed 3-5-91; 8:45 am]

BILLING CODE 4830-01-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 8-91]

Treasury Notes, Series L-1996

Washington, February 22, 1991.

The Secretary announced on February 21, 1991, that the interest rate on the notes designated series L-1996, described in Department Circular—Public Debt Series—No. 8-91 dated February 14, 1991, will be 7-½ percent. Interest on the notes will be payable at the rate of 7-½ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-5195 Filed 3-5-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 7-91]

Treasury Notes, Series X-1993

Washington, February 21, 1991.

The Secretary announced on February 20, 1991, that the interest rate on the notes designated series X-1993, described in Department Circular—Public Debt Series—No. 7-91 dated February 14, 1991, will be 6-¾ percent. Interest on the notes will be payable at the rate of 6-¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-5194 Filed 3-5-91; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

[Dept. Circ. 570, 1990 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; Folksamerica Reinsurance Co.; Correction

On February 26, 1991, 56 FR page 7894, we published a notice regarding Folksamerica Reinsurance Company in error. The correct notice follows.

A Certificate of Authority as an acceptable reinsurer on Federal bonds is hereby issued to the following Company under title 31, sections 9304 to 9308, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1990 Revision, on page 27372 to reflect this addition:

Folksamerica Reinsurance Company. Business Address: 90 William Street, New York, NY 10038. UNDERWRITING LIMITATION [b]: $5,192,000.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 287-3921.

Dated: February 28, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91-5198 Filed 3-5-91; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1990-Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds, Termination of Authority; Republic Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Republic Insurance Company, under the United States Code, title 31, sections 9304–9308, to qualify as acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 55 FR 27362, July 2, 1990.

With respect to any bonds currently in force with Republic Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287–3921.

Dated: February 28, 1991.

Charles F. Schwan, III,

Director, Funds Management Division.

[FR Doc. 91–5199 Filed 3–5–91; 8:45 am]

BILLING CODE 4810–35–M

Office of Foreign Assets Control

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: On February 25, 1991, the Office of Foreign Assets Control ("FAC") issued licenses pursuant to the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49857 ("KACR"), to permit seven blocked Kuwaiti banks to settle obligations which arose prior to the Iraqi invasion of Kuwait on August 2, 1990.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel, tel.: (202) 535–6020, or Steven I. Pinter, Chief of Licensing, tel.: (202) 535–9449, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On February 25, 1991, FAC issued licenses to the following Kuwaiti banks:

Al Ahli Bank of Kuwait (K.S.C.)
The Bank of Kuwait & The Middle East (K.S.C.)
Burgan Bank S.A.K.
Commercial Bank of Kuwait S.A.K.
The Gulf Bank, K.S.C.
The Industrial Bank of Kuwait (K.S.C.)
Kuwait Real Estate Bank (K.S.C.)

These banks' assets that are subject to U.S. jurisdiction were blocked pursuant to Executive Order 12723 of August 2, 1990, 55 FR 31805 (August 3, 1990), as property of entities determined by FAC to be owned or controlled by the Government of Kuwait. The specific licenses issued on February 25, authorize the banks to utilize their blocked assets to settle most obligations incurred prior to August 2, 1990, and to manage their blocked assets that are subject to U.S. jurisdiction. Excluded from the general settlement authorization are obligations that are denominated in Kuwaiti dinars and claims related to deposits (except interbank deposits) held in Kuwait or Iraq. In addition, pursuant to U.S. and U.N. sanctions against Iraq and occupied Kuwait, no property may be transferred to the Government of Iraq, its agencies, instrumentalities, or controlled entities, to a person in Iraq or entity operated from Iraq, or to a person in Kuwait or entity operated from Kuwait.

The Central Bank of Kuwait, working closely with the Office of Foreign Assets Control of the United States Department of the Treasury and cooperating governments worldwide, has established procedures to satisfy the obligations of these seven Kuwaiti banks (with the exceptions noted above). The banks, as well as other assets of the Government of Kuwait located in the United States, were blocked by the President at the request of the legitimate Government of Kuwait to protect them from looting by Iraq. Their blocked status prevents any transactions with U.S. persons, including creditors of the banks, absent Treasury authorization.

The specific licenses, issued on February 25, 1991, allow each bank to take all steps necessary to settle its obligations which arose prior to August 2, 1990 (with the exceptions noted above), including, among other things, obtaining information concerning claims, arranging credit facilities, and liquidating and transferring assets. The banks are authorized to commence payment of obligations on March 18, 1991. Authorization to satisfy obligations include authorization to pay interest on obligations. The Central Bank of Kuwait has notified FAC that it believes the seven banks are fully able to satisfy all valid obligations that they have been specifically licensed to settle, but has nonetheless added its guarantee of payment in satisfaction of such obligations. The Central Bank of Kuwait has been separately licensed for FAC and is therefore able to utilize its blocked assets for this purpose, if the need should arise.

The licenses issued to the banks also authorize U.S. persons to engage in all transactions related to the settlement of the seven banks' obligations, or the management of their assets subject to U.S. jurisdiction. Claimants do not require further authorization from FAC to present their claims to the banks. Claimants may also engage in any appropriate dispute resolution proceedings, including arbitration or litigation, necessary to determining the existence of the banks' obligations without additional FAC authorization; however, the banks' assets (all of which constitute blocked property) may not be attached or be the subject of a setoff unless separately licensed.

U.S. persons may submit claims to settle outstanding obligations with the licensed Kuwaiti banks by notifying the appropriate bank official listed below:

Al Ahli Bank of Kuwait (K.S.C.): Al Ahli Bank of Kuwait, 3 Bishopsgate, London EC2N 3AB, England, Attn.: Mr. Hendrik J. Kwant, General Manager, Tel.: 011–44–71/283–1737, FAX: 011–44–71/929–4649.

The Bank of Kuwait & The Middle East (K.S.C.):

The Bank of Kuwait & The Middle East, Arab African Bank Bldg., 2nd Floor, 5 Midan El Saray El Kobra, Garden City—Cairo, Egypt, Attn.: Mr. Ali I. Shaker or Mr. M. Anis Siblini, Tel.: 011–20–2/355–1988 or 354–2390 or 354–2391, FAX: 011–20–2/354–2397.

Burgan Bank S.A.K.: Burgan Bank S.A.K., London Representative Office, 1 College Hill, London EC4R 2RA, England, Attn.: Mr. Christopher Wood, Tel.: 011–44–71/489–9843, FAX: 011–44–71/236–0409, Telex: 933045 BMBLDGN G.

Commercial Bank of Kuwait S.A.K.:

Commercial Bank of Kuwait, New York Branch, 350 Park Avenue, New York, New York 10022–6090. Attn.: Mr. Norbert M. Tiedemann, Sr., Vice, Pres. & Chief Mgr., or Mr. Mohamed F. Soliman, First Vice Pres. & Deputy Chief Mgr., Tel.: 212/207–2420, FAX: 212/935–6463.

The Gulf Bank, K.S.C.:

Money market claims: Attn.: Mr. Z.F. Sarawan, Tel.: 011–44–71/248–2843, FAX: 011–44–71/236–0314, Telex: 8811896 GULFBK G.

Travellers checks and credit cards: Attn.: Mr. J. Carlough.

Drafts, guarantees, letters of credit, and mail transfers: Attn.: Mr. H. Hafix.

Telex transfers: Attn.: Mr. A. Al Sumait.

The Gulf Bank, K.S.C., 1 College Hill, London EC4R 2RA, England, Tel.: 011–44–71/248–2843, FAX: 011–44–71/289–0404, Telex: 887688 GULFBK.

The Industrial Bank of Kuwait (K.S.C.):

c/o The United Bank of Kuwait P.L.C., 3 Lombard Street, London EC3V 9DT, England, Attn.: Mr. Tareq Zuaiter, Tel.: 011-44-71/626-3422, FAX: 011-44-71/929-3966, Telex: 888441, Swift Address: UBKL CB 21.

Kuwait Real Estate Bank (K.S.C.):

National Bank of Kuwait, 299 Park Avenue, New York, New York 10175, Attn.: Mr. Norman Kelly, Tel.: 212/303-9800, FAX: 212/319-8269.

Dated: February 25, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 27, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-5243 Filed 3-1-91; 11:10 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 28, 1991

TIME AND DATE: 10:00 a.m., Thursday, March 7, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *David Hatfield v. Colquest Energy, Inc.*, Docket No. SE 90-122-D. (Issues include whether Colquet's petition for interlocutory review should be granted.

It was determined by a unamimous vote of Commissioners that this item be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91-5361 Filed 3-4-91; 12:02 am]

BILLING CODE 6735-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of March 4, 1991.

A closed meeting will be held on Tuesday, March 5, 1991, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 5, 1991, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: February 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-5382 Filed 3-4-91; 12:02 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
March 6, 1991

Part II

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Program; State-Administered Programs; Incorporation by Reference Update; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL-3789-5]

Underground Injection Control Program; State-Administered Programs; Incorporation by Reference Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Safe Drinking Water Act (SDWA) establishes the Underground Injection Control (UIC) program, which is designed to prevent underground injection through wells that may endanger drinking water sources. The SDWA provides for States to apply for and receive approval from EPA to administer their own UIC programs, if they meet EPA's minimum requirements. Forty States and Territories have approved State-administered UIC programs but the State statutes and regulations which are incorporated by reference in the Code of Federal Regulations (CFR) as part of these approved programs have not been updated since 1984. This rule updates the State statutes and regulations which are incorporated by reference and part of the Underground Injection Control (UIC) program under the SDWA.

EFFECTIVE DATE: This regulation is effective March 6, 1991. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of March 6, 1991.

ADDRESSES: The public docket and supporting documents for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, Office of Drinking Water (WH-550E), Room 1140 East Tower, 401 M Street SW., Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Donald Olson, Office of Drinking Water (WH-550E), EPA, Washington, DC, 20460, Phone: (202) 382-5530.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency has promulgated a series of regulations under the authority of part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*). The SDWA is designed to protect the quality of drinking water in the United States and part C of the SDWA specifically mandates regulation of underground injection of fluids through wells.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for State programs to prevent well injection which may endanger drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 Code of Federal Regulations (CFR) parts 144 and 146, on May 19, 1980 (45 FR 39611), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations have been amended on several occasions since.

Section 1422 of the SDWA provides that States may apply to EPA for primary responsibility to administer the UIC program. Where States do not seek this responsibility or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, a UIC program for each State. These direct implementation (DI) programs were promulgated in four phases in 40 CFR part 147, on May 11, 1984 (49 FR 20138), November 15, 1984 (49 FR 45308), May 11, 1987 (52 FR 17680) and October 25, 1988 (53 FR 43096).

The May and November 1984 **Federal Registers** also described EPA's approval of State-administered UIC programs. For these State-administered programs, part 147 incorporates by reference requirements from appropriate State statutes and regulations. Such requirements were thus made a part of the UIC program under the SDWA. However, the State statutes and regulations which were incorporated by reference as part of the State-administered programs have not been updated since 1984. This rule updates these part 147 incorporation by reference materials for State-administered UIC programs. Today's rule is also recodifying parts of the UIC programs for Kansas and Wisconsin which were approved prior to 1984 but were inadvertently excluded when EPA promulgated its 1984 State program rules.

Sections 1421, 1423, and 1449 of the Safe Drinking Water Act provide that a State program approved by EPA is federally enforceable by EPA and/or citizen's suits in Federal court. The purpose of incorporating by reference the State statutes and regulations which make up the approved UIC program in a primacy State is to ensure that the public, the regulated community, and EPA can easily determine what constitutes the approved UIC program in a State.

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to State programs that have occurred since 1984 are accurately reflected in part 147. State UIC program revisions are controlled by EPA regulations at 40 CFR 145.32. Section 145.32(a) requires an authorized State to keep EPA informed of changes to its statutory or regulatory authorities. Section 145.32(b) specifies that when EPA receives a request from a State to modify its program, it shall determine whether the program revision is "substantial." If so, EPA must publish the proposed revision in the **Federal Register** and provide for public comment before approval. Non-substantial program revisions may be accomplished by a letter from the EPA Regional Administrator to the State. Since the time of initial approval of the State UIC programs, EPA has, by letter, approved a number of non-substantial revisions. Copies of these letters of approval are in the public docket for this rule. Today's rule simply revises the citations in the CFR to reflect these previously approved, non-substantial State program revisions.

Finally, today's rule will modify the language of the EPA-administered programs to reflect that the hazardous waste injection restrictions found in part 148 are part of the EPA-administered program in those States. (Part 147 already reflects the applicable Federal requirements in nonauthorized States and on Indian lands other than the part 148 requirements.) The part 148 requirements were promulgated on July 26, 1988 (53 FR 28118), and have been modified on various occasions since. As explained in the July 26, 1988 rule, States need not seek authorization to administer part 148 to maintain UIC primacy (53 FR 28120). However, States may wish to do so, assuming the State meets the requirements of both the SDWA and RCRA. See 50 FR 28728 *et seq.* (July 15, 1985) for more details. EPA will modify the codification of existing State programs in part 147 as appropriate when States receive authorization to administer part 148 requirements.

EPA believes today's rule falls under the "good cause" exemptions in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause", authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impracticable, unnecessary, or contrary to the public interest." Public comment is "unnecessary" in this case because the codification of previously approved, non-substantial revisions is merely a technical amendment which will not benefit from notice and comment procedures. A delayed effective date is "unnecessary" and "contrary to public interest" since the codification only reflects existing law. Immediate notice in the Code of Federal Regulations benefits the public by removing outdated citations.

The Agency would also like to note that in certain sections of the regulatory language below, EPA has reprinted existing language for the ease of the reader in locating the proposed changes.

II. State-by-State Description of Changes

1. Subpart B—Alabama: The Code of Alabama Sections 9–17–1 through 9–17–109 which is incorporated by reference at § 147.50(a)(1) is updated. The Rules and Regulations Governing the Conservation of Oil and Gas in Alabama which is incorporated by reference at § 147.50(a)(2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 (53 FR 28118, July 26, 1988) are added to the EPA-administered program requirements at § 147.60(a).

2. Subpart C—Alaska: An amendment to the Memorandum of Agreement between EPA Region X and the Alaska Oil and Gas Conservation Commission is codified at § 147.100(b). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.101(a).

3. Subpart D—Arizona: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.151(a).

4. Subpart E—Arkansas: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.205(a).

5. Subpart F—California: The California Public Resources Code and the California Administrative Code sections which are incorporated by reference at § 147.250(a) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.251(a).

6. Subpart G—Colorado: The State-administered 1425 program approved on April 2, 1984 (49 FR 13040) is codified at § 147.300. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.301(a).

7. Subpart H—Connecticut: The State-administered 1422 program approved on March 26, 1984 (49 FR 11179) is codified at § 147.350. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.353(a).

8. Subpart I—Delaware: The State-administered 1422 program approved on April 5, 1984 (49 FR 13525) is codified at § 147.400. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.403(a).

9. Subpart J—District of Columbia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.451(a).

10. Subpart K—Florida: The Florida Administrative Code sections which are incorporated by reference at § 147.500(a)(2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.501(a).

11. Subpart L—Georgia: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.550. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.553(a).

12. Subpart M—Hawaii: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.601(a).

13. Subpart N—Idaho: The title of § 147.651 is revised and the Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.651(a).

14. Subpart O—Illinois: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.703(a).

15. Subpart P—Indiana: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.751(a).

16. Subpart Q—Iowa: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.801(a).

17. Subpart R—Kansas: The incorporation by reference, Memorandum of Agreement, Statement of Legal Authority, and Program Description materials for the State-administered 1422 program are repromulgated at § 147.850 (a) through (e). These materials were inadvertently removed during a previous rulemaking action (49 FR 45291). The Kansas Administrative Regulations sections which are incorporated by reference at 147.850(a) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.860(a).

18. Subpart S—Kentucky: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.901(a).

19. Subpart T—Louisiana: An amendment to Statewide Order No. 29–N–1 which is incorporated by reference at § 147.950(a)(2) is added. Amendments to Statewide Order No. 29–B which is incorporated by reference at § 147.950(a)(3) are added. Amendments to the Memorandum of Agreement which are incorporated by reference at § 147.950(b)(1) are added. A new statement from the Attorney General which is incorporated by reference at § 147.950(c)(3) is added. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.951(a).

20. Subpart U—Maine: The introductory paragraph for the incorporation by reference section has been revised whereby the language "State of Maine" has replaced the language "State of Louisiana" at § 147.1000(a). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1001(a).

21. Subpart V—Maryland: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.1050. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1053(a).

22. Subpart W—Massachusetts: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1101(a).

23. Subpart X—Michigan: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1151(a).

24. Subpart Y—Minnesota: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1201(a).

25. Subpart Z—Mississippi: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the

EPA-administered program requirements at § 147.1252(a).

26. Subpart AA—Missouri: The Missouri Code of State Regulations incorporated at § 147.1300(a)(2) are revised and updated, and the Missouri Statutes are added to § 147.1300(a)(3). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1303(a).

27. Subpart BB—Montana: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1351(a).

28. Subpart CC—Nebraska: The Nebraska Revised Statutes sections are incorporated by reference at § 147.1400(a)(2). Chapter 57 of the Nebraska Revised Statutes which is codified at § 147.1400(b)(1) is updated. The sections of the Nebraska Environmental Protection Act and the title 122 Rules and Regulations for Underground Injection and Mineral Production Wells which are incorporated by reference at § 147.1401(a) (1) and (2) are updated. The sections of the Nebraska Environmental Protection Act which are codified at § 147.1401(b)(l) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1403(a).

29. Subpart DD—Nevada: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1451(a).

30. Subpart EE—New Hampshire: The introductory paragraph for 147.1500 has been revised to reflect the change in name of the State agency administering the UIC program. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1501(a).

31. Subpart FF—New Jersey: The New Jersey Statutes Annotated and New Jersey Administrative Code sections incorporated by reference at § 147.1550(a) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1551(a).

32. Subpart HH—New York: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1651(a).

33. Subpart II—North Carolina: The State-administered 1422 program approved on April 19, 1984 (49 FR 15553) is codified at § 147.1700. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1703(a).

34. Subpart JJ—North Dakota: The North Dakota Century Code, North Dakota Administrative Code sections and the Memorandum of Agreement which are incorporated by reference at § 147.1750(a) (1), (2) and (b) are updated. Chapter 43–02–03 of the North Dakota Administrative Code incorporated by reference at § 147.1750(a)(3) is added. The North Dakota Century Code and North Dakota Administrative Code sections which are incorporated by reference at § 147.1751(a) (2) and (4) are updated. Chapter 61–28 of the North Dakota Century Code which is codified at § 147.1751(b)(3) is updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1752(a).

35. Subpart KK—Ohio: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1805(a).

36. Subpart MM—Oregon: The first sentence of the introductory paragraph has been revised to reflect the addition of the 1425 program. The Oregon Administrative Rules sections incorporated by reference at § 147.1900(a)(2) are updated. The Oregon Revised Statutes and Oregon Administrative Rules sections which are codified at § 147.1900(b) (1) and (2) are updated. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1901(a).

37. Subpart NN—Pennsylvania: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.1951(a).

38. Subpart OO—Rhode Island: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2001(a).

39. Subpart PP—South Carolina: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2051(a).

40. Subpart QQ—South Dakota: The Administrative Rules of South Dakota sections which are incorporated by reference at § 147.2100(a)(2) are updated. The section title is revised and the Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2101(a).

41. Subpart RR—Tennessee: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2151(a).

42. Subpart SS—Texas: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2205(a).

43. Subpart TT—Utah: At § 147.2250, sections of the Utah Water Pollution Control Act are updated at paragraph (a) and paragraphs (b), (c) (1) and (3), (d) (3) and (e) are updated also. The Utah Administrative Code is added to § 147.2250(a)(2). Paragraph (a)(2) is renumbered to paragraph (a)(3) also at § 147.2250. Sections of the Utah Code Annotated and the Oil and Gas Conservation General Rules are added to 147.2251(a) (1) and (2). Program description materials are added at § 147.2251(d)(3). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2253(a).

44. Subpart UU—Vermont: The introductory paragraph for § 147.2300 is revised to reflect the change in the name of the State agency administering the UIC program. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2303(a).

45. Subpart VV—Virginia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at 147.2351(a). The effective date of the program on non-Indian lands is corrected at 147.2351(b) (see 53 FR 43091).

46. Subpart WW—Washington: Chapter 173–160 of the Washington Administrative Code is added at § 147.2400(a)(4). The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2403(a).

47. Subpart XX—West Virginia: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2453(a).

48. Subpart YY—Wisconsin: The incorporation by reference, Memorandum of Agreement, Statement of Legal Authority, and Program Description materials for the State-administered 1422 program are repromulgated at § 147.2500 (a) through (e). These materials were inadvertently removed during a previous rulemaking action (49 FR 45291). The Wisconsin Statutes Annotated and Wisconsin Administrative Code sections which are incorporated by reference at § 147.2500(a) (1) and (4) are updated.

49. Subpart ZZ—Wyoming: The Wyoming Environmental Quality Act,

Wyoming Statutes sections which are incorporated by reference at §§ 147.2550 (a)(1) and (a)(5) are added to and updated, and existing § 147.2550(a)(5) is renumbered to § 147.2550(a)(6). At § 147.2550(b) paragraphs (2) and (3) are renumbered to (1) and (2) and existing paragraph (b)(1) is replaced. The Wyoming Statutes, Wyoming Administrative Procedure Act and the Department of Environmental Quality Rules of Practice and Procedure sections which are codified at § 147.2550(b) (1) and (2) are updated and (3) is added. The Wyoming Statutes Annotated which were previously under the heading of (*b*) *Other laws* are now incorporated by reference at § 147.2551 (a)(2) and paragraph (a)(1) is updated. The Memorandum of Agreement, Statement of Legal Authority, and Program Description materials codified at § 147.2551 (b), (c) and (d) are updated and the paragraphs have been reordered because former paragraph (*b*) *Other laws* has been replaced. The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2553(a).

50. Subpart AAA—Guam: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2601(a).

51. Subpart BBB—Puerto Rico: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2651(a).

52. Subpart CCC—Virgin Islands: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2701(a).

53. Subpart DDD—American Samoa: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2751(a).

54. Subpart EEE—Commonwealth of the Northern Mariana Islands: The Hazardous Waste Injection Restrictions of 40 CFR Part 148 are added to the EPA-administered program requirements at § 147.2801(a).

55. Subpart FFF—Trust Territory of the Pacific Islands: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.2851(a).

56. Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes: The Hazardous Waste Injection Restrictions of 40 CFR part 148 are added to the EPA-administered program requirements at § 147.3000(a).

57. Subpart III—Lands of Certain Oklahoma Indian Tribes: The Hazardous Waste Injection Restrictions of 40 CFR Part 148 are added to the EPA-administered program requirements at § 147.3100(a).

III. Regulatory Impact

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the proposed amendments to the regulations are major and therefore subject to the requirements of a Regulatory Impact Analysis. These proposed amendments do not impose any additional burden on the States or the regulated community. The proposed amendments do not have an annual effect on the economy of $100 million or more, nor do they satisfy any of the other criteria listed in section 1(b) of the Executive Order. Therefore these proposed amendments do not constitute a major rulemaking. This proposal has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply to this proposed rule since limited information collection or record-keeping would be involved. This proposed rule would merely update the incorporation by reference material for which any information collection or record-keeping requirements have already been approved by OMB.

C. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any proposed rule, unless the head of the agency certifies that the rule, if promulgated, will not have significant economic impact on a substantial number of small entities. These proposed amendments to the regulations require no additional reporting or other burdens on the regulated community. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 147

Administrative practice and procedures, Confidential business information, Incorporation by reference, Reporting and record keeping requirements, Underground injection.

Dated: January 15, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 147 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h (*et seq.*; and 42 U.S.C. 6901 *et seq.*

2. In Subpart B—Alabama:

a. By revising 147.50(a) (1) and (2) to read as follows:

§ 147.50 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) Code of Alabama Sections 9–17–1 through 9–17–109 (Cumm. Supp. 1989);

(2) State Oil and Gas Board of Alabama Administrative Code, Oil and Gas Report 1 (supplemented through May 1989), Rules and Regulations Governing the Conservation of Oil and Gas in Alabama, and Oil and Gas Statutes of Alabama with Oil and Gas Board Forms, § 400–1–2 and § 400–1–5–.04.

* * * * *

b. By revising § 147.60(a) to read as follows:

§ 147.60 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

3. In Subpart C—Alaska:

a. By revising § 147.100(b) to read as follows:

§ 147.100 State-administered program—Class II wells.

* * * * *

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10, and the Alaska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on January 29, 1986, as amended on June 21, 1988.

* * * * *

b. By revising § 147.101(a) to read as follows:

§ 147.101 EPA-administered program.

(a) *Contents.* The UIC program in the State of Alaska for Class I, III, IV, and V wells, and for all classes of wells on Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

4. In Subpart D—Arizona, by revising § 147.151(a) to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, is administered by EPA. The UIC program for Navajo Indian lands consists of the requirements contained in Subpart HHH of this part. The program for all injection activity except that on Navajo Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

5. In Subpart E—Arkansas, by revising § 147.205(a) to read as follows:

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

6. In Subpart F—California:

a. By revising § 147.250(a)(1) and (2) to read as follows:

§ 147.250 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) California Laws for Conservation of Petroleum and Gas, California Public Resources Code Div. 3, Chapt. 1, §§ 3000–3359 (1989);

(2) California Administrative Code, title 14, §§ 1710 to 1724.10 (May 28, 1988).

* * * * *

b. By revising § 147.251(a) to read as follows:

§ 147.251 EPA-administered program—Class I, III, IV and V wells and Indian lands.

(a) *Contents.* The UIC program in the State of California for Class I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

6. In Subpart G—Colorado:

a. By adding text to § 147.300 and revising the section heading to read as follows:

§ 147.300 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Colorado, except those wells on Indian Lands, is the program administered by the Colorado Oil and Gas Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on April 2, 1984 (49 FR 13040); the effective date of this program is April 2, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Colorado. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the State of Colorado Oil and Gas Conservation Commission, Department of Natural Resources, Suite 380 Logan Tower Building, 1580 Logan Street, Denver, Colorado, 80203. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Colorado Revised Statutes, 1989 replacement volume, Section 34–60–101 through 34–60–123;

(2) Colorado Revised Statutes, 1989 replacement volume, Section 25–8–101 through 25–8–612;

(3) Rules and Regulations, Rules of Practice and Procedure, and Oil and Gas Conservation Act (As Amended) Department of Natural Resources, Oil and Gas Conservation Commission of the State of Colorado (revised July 1989);

(4) Oil and Gas Conservation Commission Revised Rules and Regulations in the 300, 400, 500, and 600 series, effective March 20, 1989.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the Colorado Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on March 3, 1984 and amended on August 30, 1989.

(c) *Statement of legal authority.* (1) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission", March 15, 1983;

(2) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Injection Control Program of Colorado Oil and Gas Conservation Commission", April 29, 1983;

(3) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Underground Injection Control Program of Colorado Oil and Gas Conservation Commission, interpretation of C.R.S. 1973, 34–60–110", July 11, 1983;

(4) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission", February 17, 1984;

(5) Memorandum from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, "Re: Authority to set and enforce maximum pressure for injecting fluids into Class II wells with existing permits", March 7, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto:

(1) Application and accompanying materials for approval of Colorado's UIC program for Class II wells submitted by the Director of the Colorado Oil and Gas Conservation Commission to the Regional Administrator, May 3, 1983;

(2) Supplemental amendment to Colorado's application for primacy for the UIC program for Class II wells describing the process through which the State will ensure enforceable limits for maximum injection pressure, describing the Commission's plan of administration for Class II wells, and describing Mechanical Integrity Test procedures for Class II wells, March 7, 1984;

(3) Official correspondence concerning various program issues between the Colorado Oil and Gas Conservation Commission and EPA

Region VIII, for the period from March 7, 1984 to May 8, 1989.

b. By revising § 147.301(a) to read as follows:

§ 147.301 EPA-administered program—Class I, III, IV, V wells and Indian lands.

(a) *Contents.* The UIC program for Class I, III, IV and V wells on all lands in Colorado, including Indian lands, and for Class II wells on Indian lands, is administered by EPA. The program for all EPA-administered wells in Colorado other than Class II wells on the lands of the Ute Mountain Ute consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

8. In Subpart H—Connecticut:

a. By reserving §§ 147.351 and 147.352, and adding § 147.350 to read as follows:

§ 147.350 State-administered program.

The UIC program for all classes of wells in the State of Connecticut, except those wells on Indian lands, is the program administered by the Connecticut Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on March 26, 1984 (49 FR 11179); the effective date of this program is March 26, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Connecticut. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and CFR part 51. Copies may be obtained at the State of Connecticut, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, 06106. Copies may be inspected at the Environmental Protection Agency, Region I, John F. Kennedy Federal Building, room 2203, Boston, Massachusetts, 02203, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Connecticut General Statutes Annotated, title 22a (Environmental Protection), chapter 439, sections 22a–1 through 22a–27 (1985 and Cumm. Supp. 1990);

(2) Connecticut General Statutes Annotated, Title 22a (Environmental Protection), Chapter 446K (1985 and Cumm. Supp. 1990).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region I and the Connecticut Department of Environmental Protection, signed by the EPA Regional Administrator on August 9, 1983.

(c) *Statement of legal authority.* (1) Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 8, 1981;

(2) Addendum to the Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 10, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.353(a) to read as follows:

§ 147.353 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

9. In Subpart I—Delaware:

a. By reserving §§ 147.401 and 147.402 and adding § 147.400 to read as follows:

§ 147.400 State-administered program.

The UIC program for all classes of wells in the State of Delaware, except those wells on Indian lands, is the program administered by the Delaware Department of Natural Resources and Environmental Control approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 5, 1984 (49 FR 13525); the effective date of this program is May 7, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Delaware. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware, 19903. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Delaware Environmental Protection Act, (Environmental Control) 7 Delaware Code Annotated, Chapter 60, Sections 6001–6060 (Revised 1974 and Cumm. Supp. 1988);

(2) State of Delaware Regulations Governing Underground Injection Control, parts 122, 124 and 146 (Department of Natural Resources and Environmental Control), effective August 15, 1983.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Delaware Department of Natural Resources and Environmental Control, signed by the EPA Regional Administrator on March 28, 1984.

(c) *Statement of legal authority.* Statement of the Delaware Attorney General for the Underground Injection Control Program, signed by the Attorney General on January 26, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application (August 10, 1983), or as supplements thereto (October 14, 1983).

b. By revising § 147.403(a) to read as follows:

§ 147.403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

* * * * *

10. In Subpart J—District of Columbia, by revising § 147.451 (a) to read as follows:

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia, including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

11. In Subpart K—Florida:

a. By revising § 147.500(a)(2) to read as follows:

§ 147.500 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(2) Chapter 17-28, Underground Injection Control, Florida Administrative Code (April 27, 1989).

* * * * *

b. By revising § 147.501(a) to read as follows:

§ 147.501 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

12. In Subpart L—Georgia:

a. By reserving §§ 147.551 and 147.552 and adding § 147.550 to read as follows:

§ 147.550 State-administered program.

The UIC program for all classes of wells in the State of Georgia, except those wells on Indian lands, is the program administered by the Georgia Department of Natural Resources, Environmental Protection Division approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 19, 1984 (49 FR 15553); the effective date of this program is May 21, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Georgia. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, SW., Atlanta, Georgia, 30334. Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365, or at the Office of the Federal Register, 1100 L Street NW., Washington, DC, 20408.

(1) Oil and Gas and Deep Drilling Act of 1975, Official Code of Georgia Annotated (O.C.G.A.) §§ 12-4-40 through 12-4-53 (1988);

(2) Ground Water Use Act of 1972, O.C.G.A. §§ 12-5-90 through 12-5-107 (1988);

(3) Water Well Standards Act of 1985, O.C.G.A. §§ 12-5-12, through 12-5-138 (1988);

(4) Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 through 50-13-22 (Reprinted from the O.C.G.A. and 1988 Cumm. Supp.);

(5) Georgia Water Quality Control Act, O.C.G.A. §§ 12-5-20 through 12-5-53 (1988);

(6) Georgia Hazardous Waste Management Act, O.C.G.A. §§ 12-8-60 through 12-8-83 (1988);

(7) Georgia Safe Drinking Water Act of 1977, O.C.G.A. §§ 12-5-170 through 12-5-193 (1988);

(8) Rules of Georgia Department of Natural Resources, Environmental Protection Division, Water Quality Control, GA. COMP. R. & REGS. Chapter 391-3-6-.13 (Revised July 28, 1988).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region IV and the State of Georgia, signed March 1, 1984.

(c) *Statement of legal authority.* (1) Unofficial Opinion of the Georgia Attorney General, Op. Atty. Gen. 080-24, June 12, 1980;

(2) Underground Injection Control Program, Attorney General's Statement, February 4, 1982;

(3) Amended Attorney General's Statement Relating to Authority of the State of Georgia to Implement an Underground Injection Control Program, April 22, 1983;

(4) Letter to EPA Office of General Counsel from Senior Assistant Attorney General "Re: State UIC Program", July 13, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.553(a) to read as follows:

§ 147.553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

13. In Subpart M—Hawaii, by revising § 147.601(a) to read as follows:

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

14. In Subpart N—Idaho, by revising the title of § 147.651 and paragraph (a) to read as follows:

§ 147.651 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Idaho is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

15. In Subpart O—Illinois, by revising § 147.703(a) to read as follows:

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

16. In Subpart P—Indiana, by revising § 147.751(a) to read as follows:

§ 147.751 EPA-administered program—

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

17. In Subpart Q—Iowa, by revising § 147.801(a) to read as follows:

§ 147.801 EPA-administered program.

(a) *Contents.* The UIC program for the State of Iowa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

18. In Subpart R—Kansas:

a. By adding paragraphs §§ 147.850 (a) through (e) to existing text to read as follows:

§ 147.850 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Kansas. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, 66620. Copies may be inspected at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Chapter 28, Article 46, Underground Injection Control Regulations, Kansas Administrative Regulations §§ 28-46-1 through 28-46-42 (1988 and Supp. 1987);

(2) Chapter 28, Article 43, Construction, operation, monitoring and abandonment of salt solution mining wells, Kansas Administrative Regulations §§ 28-43-1 through 28-43-10 (1988);

(3) Kansas Statutes Annotated §§ 65-161, 65-164 through 65-166a, 65-171d (1980 and Cumm. Supp. 1989).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for the select sections identified in paragraph (a) of this section, are also part of the approved State-administered program: Kansas Statutes Annotated §§ 65-161 through 65-171(w), (1980 and Supp. 1983).

(c) *Memorandum of Agreement.* (1) The Memorandum of Agreement between EPA Region VII and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on July 29, 1983;

(2) Addendum No. 1 of the Memorandum of Agreement, signed by the EPA Regional Administrator on August 29, 1983.

(d) *Statement of legal authority.* (1) "Statement of Attorney General", signed by the Attorney General of the State of Kansas, November 25, 1981;

(2) "Supplemental Statement of Attorney General", signed by the Attorney General of the State of Kansas, undated (one page).

(e) *Program description.* The program description and any other materials submitted as part of the application or supplements thereto.

b. By revising § 147.860(a) to read as follows:

§ 147.860 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Kansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

19. In Subpart S—Kentucky, by revising § 147.901(a) to read as follows:

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

20. In Subpart T—Louisiana:

a. By revising the first sentence of the introductory text and paragraphs (a)(2) and (b)(1), and by adding paragraphs (a)(3) (iv), (v), (vi), (vii), and (c)(3) to § 147.950 to read as follows:

§ 147.950 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Louisiana, except those wells on Indian lands, is the program administered by the Louisiana Department of Natural Resources approved by EPA pursuant to sections 1422 and 1425 of the SDWA.

* * *

(a) * * *

(2) Underground Injection Control Program Regulations for Class I, III, IV, and V wells, Statewide Order No. 29-N-1 (February 20, 1982), as amended June 1, 1985 and January 20, 1986;

(3) * * *

(iv) Amendment to Statewide Order No. 29-B (Amendment concerning the underground injection control of saltwater disposal wells, enhanced recovery injection wells, and liquid hydrocarbon storage wells) (effective February 20, 1982);

(v) Amendment to Statewide Order No. 29-B (Amendment concerning the offsite disposal of drilling mud and saltwater) (effective May 20, 1983);

(vi) Amendment to Statewide Order No. 29-B (Amendment concerning disposal of nonhazardous oilfield waste) (March 20, 1984, effective May 20, 1984);

(vii) Amendment to Statewide Order No. 29-B (Amendment concerning the administrative approval of injectivity tests and pilot projects in order to determine the feasibility of proposed enhanced recovery projects) (June 20, 1985, effective July 1, 1985).

* * * * *

(b)(1) The Memorandum of Agreement (Class I, III, IV, and V wells) between EPA Region VI and the Louisiana Department of Natural Resources, Office of Conservation, signed by the EPA Regional Administrator on March 17, 1982 and amended by Addendum 1 and Addendum 2 on November 3, 1989;

* * * * *

(c) * * *

(3) Letter from Attorney General of Louisiana to EPA, "Re: Class I Hazardous Waste Injection Well Regulatory Program; Attorney General's Statement, October 9, 1989 (9 pages);

* * * * *

b. By revising § 147.951(a) to read as follows:

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

21. In Subpart U—Maine:

a. By revising § 147.1000(a) to read as follows:

§ 147.1000 State-administered program.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the

applicable UIC program under the SDWA for the State of Maine. This incorporation by reference was approved by the Director of the OFR on June 25, 1984.

* * * * *

b. By revising § 147.1001(a) to read as follows:

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

* * * * *

22. In Subpart V—Maryland:

a. By reserving §§ 147.1051 and 147.1052 and adding § 147.1050 to read as follows:

§ 147.1050 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Maryland, except those wells on Indian lands, is the program administered by the Maryland Department of the Environment approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 19, 1984 (49 FR 15553); the effective date of this program is June 4, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Maryland. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 07 promulgated and effective as of March 1, 1989;

(2) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 01, promulgated and effective as of March 1, 1989;

(3) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 02, promulgated and effective as of March 1, 1989;

(4) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 03, promulgated and effective as of March 1, 1989;

(5) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 04, promulgated and effective as of March 1, 1989;

(6) Code of Maryland Regulations, Title 26, Subtitle 13, Chapter 05, section .19, promulgated and effective as of August , 1, 1989;

(7) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 02, promulgated and effective as of March 1, 1989;

(8) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 04, promulgated and effective as of March 1, 1989.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Maryland Department of the Environment, as submitted on August 2, 1983, and revised on February 16, 1984.

(c) *Statement of legal authority.* Statement from the Maryland Attorney General on the Underground Injection Control Program, as submitted on August 2, 1983, and revised on February 16, 1984.

(d) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.1053(a) to read as follows:

§ 147.1053 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

23. In Subpart W—Massachusetts.

a. By revising § 147.1101(a) to read as follows:

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

24. In Subpart X—Michigan, by revising § 147.1151(a) to read as follows:

§ 147.1151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Michigan, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

25. In Subpart Y—Minnesota by revising § 147.1201(a) to read as follows:

§ 147.1201 EPA-administered program.

(a) *Contents.* The UIC program for the State of Minnesota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

26. In Subpart Z—Mississippi, by revising § 147.1252(a) to read as follows:

§ 147.1252 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

27. In Subpart AA—Missouri.

a. By revising (a)(2) and adding (a)(3) to § 147.1300 to read as follows:

§ 147.1300 State-administered program.

* * * * *

(a) * * *

(2) Missouri Code of State Regulations, title 10, division 50, chapters 1 and 2 (June 1984);

(3) Vernon's Annotated Missouri Statutes chapter 204, §§ 204.006 through 204.470 (1983 and Cumm. Supp. 1990).

* * * * *

b. By revising § 147.1303(a) to read as follows:

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Missouri is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 145, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

28. In Subpart BB—Montana, by revising § 147.1351(a) to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Montana, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

29. In Subpart CC—Nebraska:

a. By revising paragraphs (a)(2) and (b)(1) of § 147.1400 to read as follows:

§ 147.1400 State-administered program—Class II wells.

* * * * *

(a) * * *

(2) Revised Statutes of Nebraska, sections 57–903 and 57–906 (Reissue 1988).

(b) * * *

(1) Chapter 57, Oil and Gas Conservation, Revised Statutes of Nebraska sections 57–901 through 57–922 (Reissue 1985).

* * * * *

b. By revising paragraphs (a) (1) and (2) and (b)(1) of § 147.1401 to read as follows:

§ 147.1401 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(1) Nebraska Environmental Protection Act, Revised Statutes of Nebraska sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987);

(2) Nebraska Department of Environmental Control, Title 122—Rules and Regulations for Underground Injection and Mineral Production Wells, Effective Date: February 16, 1982, Amended Dates: November 12, 1983, March 22, 1984; as amended by amendment approved by the Governor on January 2, 1989.

(b) * * *

(1) Nebraska Environmental Protection Act, Nebraska Revised Statutes sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987 and Cumm. Supp. 1988);

* * * * *

c. By revising § 147.1403(a) to read as follows:

§ 147.1403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nebraska is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

30. In Subpart DD—Nevada:

a. By revising § 147.1451(a) to read as follows:

§ 147.1451 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nevada is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

31. In Subpart EE—New Hampshire.

a. By revising the introductory text of § 147.1500 to read as follows:

§ 147.1500 State-administered program.

The UIC program for all classes of wells in the State of New Hampshire, except those wells on Indian lands, is the program administered by the New Hampshire Department of Environmental Services, approved by the EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on September 21, 1982 (47 FR 41561); the effective date of this program is October 21, 1982. This program consists of the following elements:

* * * * *

b. By revising § 147.1501(a) to read as follows:

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

32. In Subpart FF—New Jersey:

a. By revising paragraphs (a) (1) and (2) in § 147.1550 to read as follows:

§ 147.1550 State-administered program.

* * * * *

(a) * * *

(1) Water Pollution Control Act, New Jersey Statutes Annotated sections 58:10A–1 through 58:10A–20 (West 1982 and Supp. 1990);

(2) New Jersey Administrative Code, sections 7:14A–1.1 through 1.9 (subchapter 1), 7:14A–2.1 through 2.15 (subchapter 2), 7:14A–5.1 through 5.17, (subchapter 5) (amended March 1988).

* * * * *

b. By revising § 147.1551(a) to read as follows:

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

33. In Subpart HH—New York, by revising § 147.1651(a) to read as follows:

§ 147.1651 EPA-administered program.

(a) *Contents.* The UIC program for the State of New York, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

34. In Subpart II—North Carolina:

§§ 147.1701 and 147.1702 [Reserved]

a. By reserving §§ 147.1701 and 147.1702 and adding § 147.1700 to read as follows:

§ 147.1700 State-administered program.

The UIC program for all classes of wells in the State of North Carolina, except those wells on Indian lands, is the program administered by the North Carolina Department of Environment, Health and Natural Resources approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on April 19, 1984 (49 FR 15553); the effective date of this program is April 19, 1984.

This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Carolina. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611. Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(1) Administrative Procedure Act, N.C. GEN. STAT. 150B-1 through 150B-64 (1987 and Cumm. Supp. 1989);

(2) North Carolina Well Construction Act, N.C. GEN. STAT. §§ 87-83 through 87-99 (1989 and Cumm. Supp. 1989);

(3) Water and Air Resources, N.C. GEN. STAT. §§ 143-211 through 143-215.10 (1987 and Cumm. Supp. 1989);

(4) Solid Waste Management, N.C. GEN. STAT. §§ 130A-290 through 130A-309.03 (1989);

(5) North Carolina Drinking Water Act, N.C. GEN. STAT. §§ 130A-311 through 130A-332 (1989);

(6) Sanitary Sewage Systems, N.C. GEN. STAT. §§ 130A-333 through 130A-335 (1989).

(b) *Other laws.* The following rules and regulations, although not incorporated by reference, are also part of the approved State-administered program:

(1) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Groundwater Classification and Standards: General Considerations (September 22, 1988);

(2) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Criteria and Standards Applicable to Injection Wells (September 22, 1988).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between the State of North Carolina and EPA Region IV, signed March 1, 1984.

(d) *Statement of legal authority.* (1) Underground Injection Control Program, Attorney General's Statement (June 15, 1982);

(2) Amendment to Underground Injection Control Program, Attorney General's Statement (February 9, 1984).

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

b. By revising § 147.1703(a) to read as follows:

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

35. In Subpart JJ—North Dakota:

a. By revising paragraphs (a) (1) and (2) and (b), and by adding paragraph (a)(3) to § 147.1750 to read as follows:

§ 147.1750 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) North Dakota Century Code, Chapter 38-08 (Control of Gas and Oil Resources, 1987 and Supp. 1989);

(2) North Dakota Administrative Code, Chapter 43-02-05 (Underground Injection Control, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987);

(3) North Dakota Administrative Code, Chapter 43-02-03 (General Rules, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987).

(b) The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, Oil and Gas Division, signed by the EPA Regional Administrator on June 16, 1983, as amended September 7, 1989.

* * * * *

b. By revising paragraphs (a) (2) and (4), and (b)(3) of § 147.1751 to read as follows:

§ 147.1751 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(2) North Dakota Century Code, Sections 61-28-02 and 61-28-06 (1989);

* * * * *

(4) North Dakota Administrative Code, Chapter 43-02-02 (Subsurface Mineral Exploration and Development) (August 1986), and Chapter 43-02-02.1 (Underground Injection Control Program) (March 1, 1984);

* * * * *

(b) * * *

(3) North Dakota Century Code Chapter 61-28 (Control, Prevention and Abatement of Pollution of Surface Waters) (1989);

* * * * *

c. By revising § 147.1752(a) to read as follows:

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

36. In Subpart KK—Ohio:

a. By revising § 147.1805(a) to read as follows:

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

37. In Subpart MM—Oregon:

a. By revising the first sentence of the introductory text, and paragraphs (a)(2), and (b) (1) and (2) of § 147.1900 to read as follows:

§ 147.1900 State-administered program.

The UIC program for all classes of wells in the State of Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 and section 1425 of the SDWA. * * *

(a) * * *

(2) Oregon Administrative Rules, Chapter 340, Division 44, sections 340-44-005 through 340-44-055 (October 1983); Chapter 340, Division 45, sections 340-45-005 through 340-45-075 (January 1990); Chapter 632, Division 10, sections 632-10-002 through 632-10-235 (May 1986); Chapter 632, Division 20, sections 632-20-005 through 632-20-180 (May 1984).

(b) * * *

(1) Oregon Revised Statutes, Chapter 183 (1987); 192.420, 192.500, 459.460(3), 468.005 through 468.605, and 468.780

through 468.997; Chapters 516 and 522 (1983);

(2) Oregon Administrative Rules, chapter 137, Div. 3 (July 1982); chapter 340, Div. 11 (April 1988); chapter 340, Div. 12 (March 1989); chapter 340, Div. 14 (November 1983); chapter 340, Div. 52 (November 1983); chapter 632, Div. 1 (June 1980); chapter 632, Div. 20 (January 1981).

* * * * *

b. By revising § 147.1901(a) to read as follows:

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

38. In Subpart NN—Pennsylvania, by revising § 147.1951(a) to read as follows:

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

39. In Subpart OO—Rhode Island, by revising § 147.2001(a) to read as follows:

§ 147.2001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

40. In subpart PP—South Carolina, by revising § 147.2051(a) to read as follows:

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

41. In subpart QQ—South Dakota:

a. By revising § 147.2100(a)(2) to read as follows:

§ 147.2100 State-administered program—Class II wells.

* * * * *

(a) * * *

(2) Administrative Rules of South Dakota, sections 74:10:02 through 74:10:07, 74:10:09, and 74:10:11 published by the South Dakota Code Commission, as revised through October 4, 1987.

* * * * *

b. By revising § 147.2101(a) and the section title to read as follows:

§ 147.2101 EPA-administered program—Class I, III, IV, and V wells and all wells on Indian lands.

(a) *Contents.* The UIC program for all Class I, III, IV, and V wells, including those on Indian lands, and for Class II wells on Indian lands in the state of South Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

42. In Subpart RR—Tennessee, by revising § 147.2151(a) to read as follows:

§ 147.2151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

43. In Subpart SS—Texas, by revising § 147.2205(a) to read as follows:

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

44. In Subpart TT—Utah:

a. By revising § 147.2250 read as follows:

§ 147.2250 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Utah, except those on Indian lands, is administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the FR on January 9, 1983 (47 FR 2321). The effective date of this program is February 10, 1983. Changes to Utah's regulations for Class I wells were made on May 15, 1990, in response to modification of national rules as promulgated by 53 FR 28188, July 26, 1988. Utah's rules were effective July 20, 1990. The revised rules, Program Description, Attorney General's statement, and Memorandum of Agreement were approved as a minor program modification on October 3, 1990. This program consists of the following elements as submitted to EPA:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Utah. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Utah Water Pollution Control Act, Utah Code Annotated, Title 26, Chapter 11, Sections 2, 8, and 10 (1989);

(2) Underground Injection Control Regulations; Utah Administrative Code, Section R448-7 (effective as of January 2, 1990);

(3) Underground Injection Control Program (adopted January 20, 1982 and revised effective July 20, 1990) (Officially submitted to EPA by the Executive Secretary of Utah Water Pollution Control Committee on August 16, 1990).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for selected sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Utah Pollution Control Act, Utah Code Annotated, Sections 26-11-1 through -20 (Supp. 1990);

(c)(1) The revised Memorandum of Agreement between EPA, Region VIII and the Utah Department of Health, Division of Environmental Health, signed by the Regional Administrator on October 3, 1990.

(2) Letter from Director, Utah Department of Health, Division of Environmental Health, Bureau of Water Pollution Control, to EPA Region VIII, Re: Underground Injection Control Program—Utah, March 15, 1982;

(3) Letter from the Executive Secretary of the Utah Water Pollution Control Committee to EPA Region VIII, "Re: Utah UIC Class I Well Program Changes," August 16, 1990;

(d) *Statement of legal authority.* (1) "Underground Injection Control Program—Attorney General's statement," signed by Attorney General, State of Utah, January, 1982;

(2) Letter from Assistant Attorney General of Utah to Chief, Drinking Water Branch, EPA Region VIII, June 18, 1982;

(3) Addendum to Underground Injection Control Program, Attorney General's Statement signed by Attorney General of Utah, August 10, 1990.

(e) The Program Description (revised June 19, 1990) and any other materials submitted as part of the application or supplements thereto.

b. By revising paragraph (a)(1) and by adding paragraphs (a)(2) and (d)(3) to § 147.2251 to read as follows:

§ 147.2251 State-administered program—Class II wells.

* * * * *

(a) * * *

(1) Utah Code Annotated, 1953, section 40-6-1 through 40-6-18, as amended 1988 and Cumm. Supp. 1990;

(2) The Oil and Gas Conservation General Rules, adopted under the authority of the Oil and Gas Conservation Act, 40-6-1 *et seq.*, Utah Code Annotated, as amended 1988 (revised March 1989), rules R615-1 through R615-4, and R615-8 through R615-10.

* * * * *

(d) * * *

(3) Memorandum to Director, Division of Oil, Gas and Mining from Assistant Attorney General regarding Underground Injection Control Program, January 8, 1985.

* * * * *

c. By revising § 147.2253(a) to read as follows:

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

45. In Subpart UU—Vermont:

a. By revising the introductory text of § 147.2300 to read as follows:

§ 147.2300 State-administered program.

The UIC program for all classes of wells in the State of Vermont, except those wells on Indian lands, is the program administered by the Vermont Department of Environmental Conservation, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on June 22, 1984; the effective date of this program is July 6, 1984. This program consists of the following elements:

* * * * *

b. By revising § 147.2303(a) to read as follows:

§ 147.2303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

46. In Subpart VV—Virginia, by revising § 147.2351 to read as follows:

§ 147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the remainder of Virginia is June 25, 1984. (53 FR 43091, October 25, 1988).

47. In Subpart WW—Washington:

a. By adding paragraph (a)(4) to § 147.2400 to read as follows:

§ 147.2400 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(4) Washington Administrative Code Chapter 173-160 (reprinted May 1988).

* * * * *

b. By revising § 147.2403(a) to read as follows:

§ 147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

48. In Subpart XX—West Virginia, by revising 147.2453(a) to read as follows:

§ 147.2453 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

49. In Subpart YY—Wisconsin, by adding paragraphs (a), (b), (c), (d), and (e) to the existing text of § 147.2500 to read as follows:

§ 147.2500 State-administered program.

* * * * *

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wisconsin. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin, 53707. Copies may be inspected at the Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Wisconsin Statutes Annotated §§ 147.015, 147.02 and 147.04 (West 1974 and Supp. 1983);

(2) Chapter NR 112, Well Construction and Pump Installation, Wisconsin Administrative Code §§ NR 112.03 and 112.20 (October 1981), as amended by Natural Resources Board Order No. WQ–25–82, approved by the Natural Resources Board on August 25, 1982;

(3) Chapter NR 113, Servicing Septic Tanks, Seepage Pits, Grease Traps or Privies, Wisconsin Administrative Code §§ NR 113.07–113.08 (1979), as amended by Natural Resources Board Order No. WQ–25–82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(4) Chapter NR 181, Hazardous Waste Management, Wisconsin Administrative Code §§ NR 181.04–181.415 (1981), as amended June 1985;

(5) Chapter NR 210, Sewage Treatment Works, Wisconsin Administrative Code § 210.05 Natural Resources Board Order No. WQ–25–82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(6) Chapter NR 214, Land Application and Disposal of Liquid Industrial Wastes and By-Products, Wisconsin Administrative Code §§ 214.03 and 214.08 (1983).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Chapter 144, Water, Sewage, Refuse, Mining and Air Pollution, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(2) Chapter 147, Pollution Discharge Elimination, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(3) Chapter 162, Pure Drinking Water, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(4) Laws of 1981, Chapter 20, § 2038 (Re: heat pump injection);

(5) Wisconsin Statutes 803.09(1) (West 1977) (intervention as of right in civil actions).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Wisconsin Department of Natural Resources, signed by the Regional Administrator on December 6, 1983.

(d) *Statement of legal authority.* (1) "Attorney General's Statement," signed by Attorney General, State of Wisconsin;

(2) Letter from Assistant Attorney General, State of Wisconsin, to EPA Region, "Re: Amendments to Attorney General's Statement-UIC," June 30, 1983.

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

50. In Subpart ZZ—Wyoming:

a. By revising paragraph (a)(1); redesignating paragraph (a)(5) as (a)(6) and revising it; adding a new paragraph (a)(5); removing paragraph (b)(1); redesignating paragraphs (b)(2) and (b)(3) as (b)(1) and (b)(2), revising new paragraphs (b)(1), and (b)(2) and adding new paragraph (b)(3) to § 147.2550 to read as follows:

§ 147.2550 State-administered program—Class I, III, IV and V wells.

* * * * *

(a) * * *

(1) Wyoming Environmental Quality Act, Wyoming Statutes sections 35–11–101 through 35–11–115, and 35–11–301 through 35–11–305 (1977 Republished Edition and 1989 Cumm. Supp.);

* * * * *

(5) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells (certified copy, signed August 25, 1989);

(6) Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining (effective March 26, 1981).

(b) * * *

(1) Article 9, Underground Water, Wyoming Statutes sections 41–3–901 through 41–3–938 (September 1982);

(2) Wyoming Administrative Procedure Act, Wyoming Statutes sections 9–4–101 through 9–4–115 (1988);

(3) Department of Environmental Quality Rules of Practice and Procedure (1982).

* * * * *

b. By revising § 147.2551 to read as follows:

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on November 23, 1982 (47 FR 52434); the effective date of this program is December 23, 1982. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wyoming. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Wyoming Oil and Gas Conservation Commission, Office of the State Oil and Gas Supervisor, P.O. Box 2640, 77 West First Street, Casper, Wyoming, 82602. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, or at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, 20408.

(1) Rules and Regulations of the Wyoming Oil and Gas Conservation Commission, including Rules of Practice and Procedure, as published by the Wyoming Oil and Gas Conservation Commission, August 7, 1990;

(2) Title 30, Chapter 5, Wyoming Statutes, sections 30–5–101 through 30–5–126 (June 1983 and Wyoming Statutes Annotated, July 1990 Supp.).

(b) *Memorandum of Agreement.* (1) The initial Memorandum of Agreement between EPA, Region VIII and Wyoming Oil and Gas Conservation Commission, signed by the EPA Regional Administrator and the Oil Field Supervisor of the Commission on June 2, 1982;

(2) Amendment No. 1 to the Memorandum of Agreement, dated December 22, 1982;

(3) Amendment No. 2 to the Memorandum of Agreement, dated January 25, 1990;

(4) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to the Acting Director, Water Management Division, EPA Region VIII, "Re: Application for Primacy in the Regulation of Class II Injection Wells," March 8, 1982;

(5) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to EPA Region VIII, "Re: Regulation of Liquid Hydrocarbon Storage Wells Under the UIC Program," July 1, 1982;

(6) Memorandum of Agreement Between the Wyoming State Board of Control, State Engineer, Oil and Gas Conservation Commission, and the Department of Environmental Quality, dated October 14, 1981.

(c) *Statement of legal authority.* (1) "Statement of Legal Authority" and "State Review of Regulations and Statutes Relevant to the UIC Program-Class II Wells," signed by Special Assistant Attorney General for the State of Wyoming, as submitted with "Wyoming Oil and Gas Conservation Commission, Application for Primacy in the Regulation of Class II Injection Wells under Section 1425 of the Safe Drinking Water Act," November 1981;

(2) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, May 13, 1982;

(3) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, July 1, 1982.

(d) *Program Description.* The Program Description and other material submitted as part of the application or amendments thereto, including the memorandum to the National UIC Branch reporting on Improvement to the Wyoming Oil and Gas 1425 program, dated April 28, 1989.

c. By revising § 147.2553(a) to read as follows:

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

51. In Subpart AAA—Guam, by revising § 147.2601(a) to read as follows:

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

52. In Subpart BBB—Puerto Rico, by revising § 147.2651(a) to read as follows:

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

53. In Subpart CCC—Virgin Islands, by revising § 147.2701(a) to read as follows:

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

54. In Subpart DDD—American Samoa, by revising § 147.2751 (a) to read as follows:

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

55. In Subpart EEE—Commonwealth of the Northern Mariana Islands, by revising § 147.2801(a) to read as follows:

§ 147.2801 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the Commonwealth of the Northern Mariana Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

56. In Subpart FFF—Trust Territory of the Pacific Islands, by revising § 147.2851(a) to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for Trust Territory of the Pacific Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

57. In Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes, by revising § 147.3000(a) to read as follows:

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands of the Navajo, the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico, and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

58. In Subpart III—Lands of Certain Oklahoma Indian Tribes, by revising 147.3100(a) to read as follows:

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

* * * * *

[FR Doc. 91-4622 Filed 3-5-91; 8:45 am.]

BILLING CODE 6560-50-M

federal register

Wednesday
March 6, 1991

Part III

Department of Defense

Department of the Army

32 CFR Part 627

The Biological Defense Safety Program—(Technical Safety Requirements)—DA Pamphlet 385-69; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 627

Biological Defense Safety Program (Technical Safety Requirements) (DA Pamphlet 385-69)

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army (DA) acting as executive agent for the Department of Defense announces the Technical Safety Requirements of the Army Biological Defense Safety Program contained in 32 CFR part 626 and in Department of the Army Pamphlet 385-69. This rule prescribes the technical safety requirements for the use, handling, shipment, storage and disposal of etiologic agents used in research, development, test, and evaluation (RDT&E) for the Biological Defense Program (BDP).

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: If you wish to comment or obtain further information concerning this publication contact: HQDA(DACS-SF), Mr. William Wortley, room 2C717, Pentagon, Washington, DC 20310-0200, (703) 695-7291.

SUPPLEMENTARY INFORMATION: The U.S. Army BDP, on behalf of the Department of Defense, supports RDT&E efforts to maintain and develop defensive measures and materiel to meet potential biological warfare threats. The program's objectives are to develop measures for identification, detection, treatment, protection, and decontamination of these threats. To meet the program objectives, it is necessary to use etiologic agents in the conduct of the necessary RDT&E. This document contains information on the safe use, handling, storage, shipment and disposal of etiologic agents and describes requirements based on the Centers for Disease Control Guidelines, Biosafety in Microbiological and Biomedical Laboratories, and establishes guidelines for toxins. This document was developed in coordination with the biological defense community and fully staffed and coordinated with subject matter experts, the Army Staff, and applicable major commands. Army-wide implementation of this program is authorized based on the policies and standards contained in the cited authority and references.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 627

Safety, Occupational safety and health, Biological, Defense.

Accordingly, 32 CFR part 627 is added to read as follows:

PART 627—THE BIOLOGICAL DEFENSE SAFETY PROGRAM, TECHNICAL SAFETY REQUIREMENTS (DA PAMPHLET 385-69)

Authority: 5 U.S.C. 102, 21 U.S.C. 111, 151-158; 42 U.S.C. 216; sec. 361, 58 Stat. 703 and 264; 49 U.S.C. App. 1803, 1804, 1807 and 1808; 50 U.S.C. 1431, 29 CFR part 1910, section 1450(e) and Pub. L. 101-510.

Subpart A—Introduction

§ 627.1 Purpose.

This pamphlet prescribes the technical safety requirements for the use, handling, shipment, storage and disposal of etiologic agents used in research, development, test, and evaluation (RDT&E) for the Biological Defense Program (BDP).

§ 627.2 Background.

The U.S. Army BDP, on behalf of the Department of Defense, supports RDT&E efforts to maintain and develop defensive measures and materiel to

meet potential biological warfare threats. The program's objectives are to develop measures for identification, detection, treatment, protection, and decontamination of these threats. To meet the program objectives, it is necessary to use etiologic agents in the conduct of the necessary RDT&E. This pamphlet contains information on the safe use, handling, storage, shipment and disposal of etiologic agents. This pamphlet describes requirements based on the Centers for Disease Control (CDC–NIH) guidelines, Biosafety in Microbiological and Biomedical Laboratories, and establishes guidelines for toxins.

§ 627.3 Scope.

The requirements stated in this pamphlet apply to all elements of the Army to include the ARNG and the USAR and its contractors and subcontractors who use, produce, store, handle or ship etiologic agents in support of the BDP, regardless of the source of the agent(s).

§ 627.4 References.

A listing of references is contained in appendix A to part 627.

§ 627.5 Abbreviations and terms.

Abbreviations and special terms used in this pamphlet are explained in appendix F to part 627.

Subpart B—Administration

§ 627.6 Safety administration.

Each BDP institution must have a safety program that complies with AR 385–10, AR 385–69, and this pamphlet. In addition, the safety program must be designed to ensure compliance with Occupational Safety and Health Administration (OSHA) requirements for health and safety; Environmental Protection Agency (EPA) regulations designed to implement the Resource Conservation and Recovery Act (RCRA) and/or the National Environmental Policy Act (NEPA); Nuclear Regulatory Commission (NRC) requirements for safe handling of radioactive isotopes (when applicable); NIH Guidelines for Research Involving Recombinant DNA Molecules; relevant national, state and local regulations; and any requirements of applicable accrediting bodies.

(a) *Goals of a Laboratory Safety Program.* The goals of the laboratory safety program are to protect those working in the laboratory, others who may potentially be exposed to hazards in the laboratory, and the enviroment. In addition, a laboratory safety program should ensure that hazardous materials will be handled and disposed of in such a way that people, other living organisms, and the environment are protected from harm. Safety awareness must be a part of everyone's habits, and can only be achieved if all senior and responsible staff have a sincere, visible, and continuing interest in the prevention of injuries and occupational illnesses. Laboratory personnel, for their part, must accept responsibility for carrying out their work in a way that protects themselves and their fellow workers.

(b) *Responsibility for Laboratory Safety.* Responsibilities for the safety program are as stated in AR 385–69. Additionally, the program will contain the following elements:

(1) The ultimate responsibility for safety within an institution lies with the Commander or Institute Director, who, along with all personnel, must have a continuing, observable and known commitment to the safety program.

(2) An effective Institutional Safety Program requires a Safety Officer appropriately trained in relevant safety technology. This individual, besides supplying advice and recommendations, will ensure that records are kept showing that the institution's physical facilities and safety rules are internally consistent and compatible with potential risks, as well as in compliance with all applicable laws, regulations, and guidelines.

(3) The responsibility for safety in a department or other equivalent administrative unit of the institution lies with its commander. Similarly, safety responsibilities are an integral function of each level of management through the first line supervisor. The Safety Office staff must work closely with administrators and investigators to develop and implement written policies and practices that promote safe laboratory work. Collectively, this group routinely must monitor current operations and practices, see that appropriate audits are maintained, and continue to seek ways to improve the safety program.

(4) Safety is a critical job element for each member of the scientific and technical staff. Each individual working in the laboratory is responsible for performing their job in a manner consistent with safety policy and training.

(5) If laboratory goals dictate operations or substances not suited to the existing facilities or equipment, it is the responsibility of the laboratory supervisor, assisted by the Safety Officer, to advise and assist the laboratory worker in developing or obtaining adequate facilities or equipment, and designing appropriate work procedures.

(6) The responsibility for authorization of a specific operation, delineation of appropriate safety procedures, and instruction of those who will carry out the operation lies with the supervisor.

(7) Potential hazards will be identified prior to initiation of work with etiologic agents, and actions necessary to avoid accidents and illnesses will be implemented. This practice, called a job safety analysis, consists of breaking a job down into its logical steps, analyzing each for its hazard potential, and deciding the safe procedures to use. The process will be designed by a project director with input from employees, and each step with potential for exposure or other incidents must be described in writing in a Standing Operating Procedures (SOP). All such SOPs will be approved by, at a minimum, the Commander or Institute Director and the Safety Officer.

(B) The job safety analysis will include a consideration of health hazards identified in AR 40–10 and of maximum credible events as described in paragraph 2–8, AR 385–69.

(c) *Safety Plans.* Clearly defined, published safety rules and monitoring procedures for compliance must be established. These rules will be readily available, in writing, for all involved in laboratory operations. This goal may be accomplished by preparing or modifying a Facility Safety Plan, Laboratory Safety Manual, Occupational Safety and Health Program Document, or equivalent. This plan will:

(1) Be coordinated with institutional and Federal, State and local emergency services.

(2) Be practiced with the emergency groups whose services are part of that plan prior to any need for their services, so that they can become familiar with any potential problem areas that may be encountered when they are called upon for assistance.

(3) Describe the method of rapid communication (e.g., telephone, alarms, etc.) that will be used in the event of an emergency.

(4) Describe the institution's etiologic agent labeling system.

(5) Describe the institution's requirements for testing of engineering controls (e.g., biological safety cabinets and high efficiency particulate air (HEPA) filters) and essential safety equipment (e.g., autoclaves) that are used to conduct RDT&E funded by the BDP.

(6) Appoint and train personnel responsible for handling an emergency.

(7) Require that emergency telephone numbers be posted, so that emergency

service personnel know whom to contact at all times of the day or night.

(8) Describe the institution's rules that have been established and are practiced to limit access to the facilities where etiologic agents under the sponsorship of the BDRP are handled. The rules will include the following requirements:

(i) Access to BL–1 and BL–1 LS laboratories is limited or restricted at the discretion of the Commander or Institute Director when experiments are in progress.

(ii) Access to areas classified as BL–2, BL–2 LS, or where work with toxins is conducted, is limited by the Commander or Institute Director when work with etiologic agents is in progress. Individuals who are at increased risk of acquiring infection or for whom infection may be unusually hazardous are not allowed in the laboratory. Only persons who have been advised of the potential hazard and meet any specific entry requirements (e.g., immunization) enter the individual laboratory or animal rooms. The Commander or Institute Director has the final responsibility for assessing each circumstance and determining who may enter or work in the laboratory.

(iii) Access to areas classified as BL–3 or BL–3 LS is limited as stated in 2–1.c.(8)(b) above, and is restricted to those persons whose presence in the facility or individual laboratory rooms is required for program or support purposes. Individuals under 18 years of age will not be permitted to enter the controlled area.

(iv) Access to BL–4 facilities is limited as stated in paragraph (c)(8) (ii) and (iii) of this section as well as: Access to the facility is limited by means of secure, locked doors; access is controlled by the Commander or Institute Director, Safety Officer, or other person responsible for the physical security of the facility. Before entry all persons will be advised as to the appropriate safeguards for ensuring their safety. Authorized persons must comply with these instructions and all other applicable entry and exit procedures. A logbook will be maintained for all personnel to indicate the date and time of each entry and exit. A card-key activated computer record (or other electronic entry device) may be used if it indicates the date and time of both entry and exit.

(9) Describe the system that is developed and is operational for the reporting of accidents and exposures, employee absenteeism, and for the medical surveillance of potential laboratory-associated illnesses.

(d) *Safety Meetings and Safety Committees.* In effective safety programs, everyone associated with the laboratory becomes involved. This involvement will be accomplished by ensuring maximum participation in planning and by conducting group safety meetings.

(1) A staff safety committee, consisting of the Commander or Institute Director or his designated representative, research supervisors, managers, medical personnel, employees, and the Safety Officer, will be established. The primary purpose of this group is to lead the safety effort, review mishaps, and recommend changes in policies, safety program, or equipment as needed to improve safety.

(2) Safety committees will meet at least quarterly and minutes will be prepared and maintained for at least 3 years.

(3) When work with recombinant DNA molecules is undertaken, an Institutional Biosafety Committee (IBC) for review of such work will be established and will function as stated in the NIH Guidelines for Research Involving Recombinant DNA Molecules (see reference appendix A to part 627).

(e) *Standing Operating Procedures (SOPs).* Besides the documented safety program that will be in effect, each institution will require that an SOP be established for each unique biological defense RDT&E operation. The SOPs will meet the criteria stated in AR 385–69, be reviewed and updated annually, and a copy of the SOP will be maintained in the work area. In addition, SOPs will address the following issues:

(1) The unique hazards introduced by the activity in the work area.

(2) The methods of controlling these hazards.

(3) Any unique procedures and requirements needed that are not described as universally required in the Safety Plan (e.g., signs, waste disposal, immunizations, emergency procedures, and personnel monitoring).

(4) Specialized orientation or training of personnel beyond that which is required in the Safety Plan.

(5) Ways of ensuring that the unique procedures are followed.

(6) Emergency procedures.

(f) *Safety Communications.* Safety communications alert people to newly recognized hazards, remind them of basic biological safety principles, and instill positive attitudes toward safety. A system of communication will be established to:

(1) Implement a biological safety training program for all personnel working with hazardous biological or chemical materials.

(2) Publish information addressing useful biological safety advice and accounts of laboratory accidents, along with the lessons to be learned from them.

(3) Make reference books and regulations concerning laboratory hazards, occupational health, and proper laboratory practices readily available.

(4) Assure that Material Safety Data Sheets (MSDS) for hazardous chemicals used in the laboratory are readily available to all employees.

(5) Training requirements are also found in § 627.9(b).

(g) *Safety Audits.* One of the essential elements of a good safety program is the conduct of periodic audits of the safety performance in a laboratory. Observations of individual safety practices, operability of safety equipment, and compliance with safety rules must be part of the audit.

(1) An individual and an alternate will be appointed as the individuals responsible for each laboratory or room where BDP work is conducted. He/she will be responsible on a daily basis for ensuring that the conduct of personnel within their room(s) and maintenance of the room complies with the safety program and SOPs.

(2) Supervisors will ensure that their projects comply with applicable safety requirements and will audit their areas on at least a weekly basis to ensure compliance.

(3) The Safety Officer or his/her qualified designee will inspect the Institution's BL–1, BL–2 and toxin laboratories quarterly. BL–3 and BL–4 laboratories, and those in which dry forms of highly potent toxins are handled will be inspected monthly by safety and health professionals. These inspections will be unannounced, and included coverage of general safety practices as well as features specific to a particular biosafety level.

(i) Reports of deficiencies or procedures that create a potentially life-threatening situation will be made directly to supervisory personnel and the Commander or Institute Director and actions will be taken immediately to correct the situation. The operation will not continue until such a deficiency is corrected.

(ii) Reports of deficiencies for other than life-threatening situations will be made as soon as possible to the appropriate supervisor, with copies furnished to the Commander or Institute Director. If a problem is widespread, all affected personnel will be notified.

(4) Supervisory personnel notified of safety deficiencies by the Safety Officer will ensure that the people directly concerned are contacted and that the

deficiencies are remedied by corrective measures before operations are resumed.

(5) Malfunctioning equipment must be reported to the appropriate individuals, labeled to indicate that it should not be used, and repaired promptly.

(6) As a minimum, the audits conducted by the Safety Officer or his/her qualified designee will cover the items listed in appendix C to part 627.

(h) *Documentation.* Records, documenting the following items, will be maintained for 3 years:

(1) Safety audits and the corrective measures.

(2) Risk assessments for new laboratory procedures proposed.

(3) Annual reviews of established SOPs.

(4) Training.

(5) Engineering controls and protective equipment certifications and tests.

(6) Safety committee meeting minutes and recommendations.

(7) Any outside auditor comments and responses.

§ 627.7 Occupational health.

An occupational health program will be implemented per AR 40–5, chapter 5, for all employees whose employment requires that they conduct duties in a BDP etiologic agent area. Essential elements of the program will include policies for:

(a) *Medical Surveillance Examinations.* Medical examinations by a licensed medical doctor will be given prior to employment, at least every three years thereafter, and upon termination of duties requiring access to laboratories where etiologic agents are used. When full medical examinations are not given annually, health professionals will perform annual health screening. Safety and health professionals will ensure that medical examiners are made aware of all hazardous substances each employee works with at the time of the medical examination. The physician's findings will include assessment of whether an employee has any health condition that would preclude work with etiologic agents. If any of the findings obtained during the examination are outside of the normal range, the employee's supervisor and employee will be notified and counseled on the courses of action available. In addition, a safety and health audit will be conducted to identify any potential occupational causes for the abnormalities, and corrective measures will be taken if applicable.

(b) *Serum Samples.* When appropriate and considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel will be collected and stored for their biologically useful lifetime, but not longer than 40 years. Additional serum specimens will be collected periodically, based upon the agents handled, or as required by participation in a Special Immunizations Program. SOPs will be written detailing the collection procedures and periods if serum sampling is deemed necessary.

(c) *Assignment of Personnel.* Personnel assigned duties in work areas where etiologic agents are used will be evaluated to determine their suitability for their assigned tasks by the installation medical authority. Only personnel who are physically and mentally capable of working in biocontainment areas (BL–3 and BL–4) or with toxins will be assigned to these duties.

(d) *Immunization of at-risk personnel.* The guidelines for immunizations in the latest edition of the American College of Physicians' Guide for Adult Immunizations and recommendations of HHS in publication number (NIH) 88–8395 shall be followed. A resource list for available immunizations for personnel at risk is given in appendix B to part 627.

(e) *Exposures.* Spills and mishaps which result in observable, known or potential exposures to etiologic agents will be immediately reported to the supervisor, Safety Officer, the responsible medical personnel, and the Commander. Appropriate medical evaluation, surveillance, and treatment will be provided and written records of these occurrences will be maintained for 40 years. A Med-16 report will be initiated (see AR 40–400).

(f) *Quarantine.* When etiologic agents designated as BL–4 by the CDC–NIH in HHS publication no. (NIH) 88–8395, (or most recent edition) are handled, a facility for the quarantine, isolation, and medical care of personnel with potential or known laboratory-associated exposures will be available.

§ 627.8 Medical records.

Army Activities will maintain medical records in accordance with AR 40–66 and FMP 293–31 for all military and Department of Army civilian employees who work with etiologic agents under sponsorship of the BDP.

Subpart C—Operational Requirements

§ 627.9 Personnel Prerequisites.

(a) *Medical.* Prior to assignment to work with etiologic agents, personnel will be evaluated by the appropriate medical personnel with respect to their assignment and will be evaluated in the medical surveillance program as described in § 627.7.

(b) *Training.* All personnel directly or indirectly involved with containment or handling of known and potentially biohazardous material shall receive instruction that adequately prepares them for their assigned duties. Training will be given by occupationally qualified personnel as determined by the commander. This training will be documented and will include:

(1) General training:

(i) Personal hygiene related to laboratory work.

(ii) Laboratory practices.

(iii) Personal protective equipment.

(iv) Effective use of engineering controls.

(v) Packaging, transportation, and shipment of etiologic agents (when applicable).

(vi) Hazardous and infectious waste disposal, handling and minimization procedures.

(2) Training conducted specifically for the facilities that the individual will be working in, including:

(i) Procedures for the facility.

(ii) Reporting incidents and accidents.

(iii) Labeling and posting of signs.

(iv) Biohazardous waste handling, approaches to minimization of the volume of waste, decontamination, packaging, and disposal.

(v) Emergency Procedures.

(3) Additional general training required for work in facilities where viable etiologic agents are present.

(i) Aseptic technique and procedures to include hands on instruction and demonstration of proficiency.

(ii) Concept and definition of biosafety levels.

(iii) Disinfection and sterilization.

(iv) Safe use of workplace equipment, for example autoclave and centrifuge.

(v) Monitoring and auditing requirements.

(vi) Precautions for handling blood, tissues and body fluids (when applicable).

(vii) The infectivity, pathogenicity, mode(s) of transmission and medical surveillance requirements of specific agents.

(viii) Training for all new employees will include a period of supervised orientation in the facilities by a scientist or technician with specific training in the procedures and properties of the etiologic agents in use. During the training period, new laboratory personnel will be under the constant supervision of appropriately trained personnel.

(ix) Personnel who are assigned tasks in BL–2, BL–3, or BL–4 facilities will also

have specific training in handling pathogens.

(x) Personnel assigned duties in a BL-4 facility will also have specific and thorough training in handling extremely hazardous infectious agents, the primary and secondary containment functions of standard and special practices, use of personal protective equipment, containment equipment, and laboratory design characteristics.

(4) Additional general training for handline toxins will include relevant items from 3-1b. (3) plus:

(i) The availability of reference material on the hazards and safe handling of toxic substances.

(ii) The biological effects of the toxin(s) in use.

§ 627.10 Operational prerequisites.

(a) *Evaluation of the Risks.* The risk assessment of laboratory activities involving the use of etiologic agents is ultimately a subjective process. Those risks associated with the agent, as well as with any adjunct elements of the activity to be conducted, (chemicals, radioisotopes, end-products, etc) must be considered in the assessment. Selection of an appropriate biosafety level for work with a particular agent or animal study depends on the virulence, pathogenicity, biological stability, route of transmission, and communicability of the agent; the nature of the laboratory; the procedures and manipulations to be used; the quantity and concentration of the agent; and the availability of effective vaccines or therapeutic measures. The characteristics of etiologic agents, primary laboratory hazards of working with the agent, and recommended biosafety levels are described by CDC-NIH (HHS publication No. (NIH) 88-8395), the considerations for recombinant DNA molecules are described by NIH, and those for oncognenic viruses are described by NCI-NIH (sources listed below). The Commander or Institute Director shall be responsible for the assignment of work with given etiologic agents to the appropriate biosafety level. A risk assessment should take into account not only the NIH Guidelines for Research Involving Recombinant DNA Molecules, but also potential hazards associated with the organism and product of the experimentation.

(1) When established guidelines exist, these will be followed. The primary source guidelines are:

(i) HHS Publication No. (NIH) 88-8395—Biosafety in Microbiological and Biomedical Laboratories, as amended, and updates published in Morbidity and Mortality Weekly Report.

(ii) NIH—Guidelines for Research Involving Recombinant DNA Molecules (FR 51: 16958-16985 and updates).

(iii) The publication by the American Committee on Anthropod-Borne Viruses Subcommittee on Arbovirus Laboratory Safety (SALS) entitled Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates in the American Journal of Tropical Medicine and Hygiene, 29(6), 1980, pp. 1359-1381.

(iv) The DHEW Publication No. (NIH) 76-1165 by the National Cancer Institute (NCI) entitled Biological Safety Manual for Research Involving Oncogenic Viruses.

(2) When samples with unidentified viable agents are obtained, the risks will be evaluated by a knowledgeable and qualified scientist who will make recommendations to the Safety Officer, who will add recommendations for review and approval by the Commander or Institute Director. When guidelines for a specific organism are not established, in addition to these steps, the Centers for Disease Control and/or SALS will be consulted. Their recommendations will be documented and provided to the Commander or Institute Director before approval.

(b) *Selection of Facilities.* The facility requirements identified by the risk assessment will be adhered to. Any variations and compensatory measures will be approved by the IBC (when recombinant DNA molecules are involved), the Safety Officer, and the Commander or Institute Director before a request for an exception or waiver is submitted as stated in AR 385-69.

(c) *Policies and Procedures.* Policies in the form of a Laboratory Safety Manual, Regulations, Memoranda, or Standing Operating Procedures (SOPs) are required for work with etiologic agents in the BDP. Before beginning a new procedure, the policies and procedures will be reviewed to ascertain that the intended operations are described and to determine the requirements that apply to the operation. If procedures exist for the intended operation, personnel will be trained to follow them; if procedures do not exist, then a detailed SOP will be written, reviewed, and approved before beginning the operation. SOPs will conform to the requirements as stated in 2-1.e., and be signed by all personnel who are required to follow the procedures, thus acknowledging that they have read and understand the contents. All SOPs that pertain to a specific area (room, laboratory, or suite) will be available at the worksite.

§ 627.11 General laboratory techniques.

The general requirements for use of etiologic agents are composed of two sets of requirements, with the requirements for toxins being a sub-set of the requirements for handling viable etiologic agents. These requirements are as follows:

(a) *General Techniques Applicable to Etiologic Agents.* (1) A fully fastened long-sleeved laboratory coat, gown, uniform, or coveralls will be worn in laboratories or animal rooms.

(2) Eating, drinking, smoking, and application of cosmetics are not permitted in the work areas.

(3) Personnel wash their hands after they handle etiologic agents or animals, and before leaving the laboratory area.

(4) Mouth pipetting is strictly prohibited. Mechanical pipetting aids must be used.

(5) Gloves:

(i) Will be worn when manipulating etiologic agents and handling containers of etiologic agents. Gloves are not required when materials are packaged appropriately for shipment.

(ii) Will be selected based on the hazards.

(iii) Will be changed frequently (or decontaminated frequently), and will be decontaminated and/or discarded into a labeled biohazarded container after each use and immediately upon observable direct contact with an etiologic agent.

(iv) Will be removed at the work-space (workbench or hood) after handling etiologic agents to ensure that doorknobs and other surfaces are not contaminated.

(6) Good housekeeping will be maintained. This includes:

(i) Work areas free of clutter.

(ii) Work environment free of tripping hazards, with adequate access to exits, emergency equipment, controls, and such.

(iii) Benches and general work areas will be cleaned regularly using a wet sponge or similar method with disinfectant as appropriate. Methods that stir up dusts such as sweeping or use of ordinary vacuum cleaners, will not be used (except for HEPA-filtered vacuum cleaners).

(iv) Specific work areas will be cleaned and decontaminated immediately following each use of an etiologic agent (at least once a day) and after any spill of viable material.

(v) Hallways and stairways will not be used for storage.

(7) All solutions, reagents and chemicals will be labeled.

(8) All contaminated liquid or solid wastes will be inactivated before disposal.

(9) Work will be conducted over spill trays or plastic-backed absorbent paper. The paper will be removed, decontaminated or disinfected, and the general area wiped with decontaminant at the end of each work day or at the end of the experiment, whichever occurs first.

(10) Etiologic agents will be kept in closed containers when not in use. Cultures, solutions, or dried etiologic agents in glass vessels transported or incubated within a room or suite will be handled in non-breakable, leak-proof pans, trays, pails, carboys, or other secondary containers large enough to contain all the material, in case of leakage or breakage of the glass vessel. Etiologic agents removed from a room or suite for transport to another approved area within the same building will be placed in a closed unbreakable secondary container before removal from the laboratory. The secondary container will be labeled on the exterior with a biohazard symbol and identification of the contents, including the required biosafety level, the scientific name, the concentration (if applicable), and the responsible individual. The secondary containers will be wiped with suitable disinfectant before removal from the laboratory/area.

(11) Working stocks of etiologic agents will be stored in double containers. The primary and secondary containers will provide a positive seal and the secondary container will be unbreakable. The secondary container will be labeled as stated in paragraph (a)(1) of this section and with the date stored.

(12) Storage units (e.g., freezers, refrigerators, cabinets, and hoods) will be labeled with the universal biohazard sign and indicate the classes of etiologic agents contained in them. Storage units will be secured when not in use.

(13) All contaminated materials, containers, spills, and solutions will be decontaminated or disinfected by approved methods before disposal.

(14) After injection of an etiologic agent into animals, the site of injection will be swabbed with a decontaminant.

(15) Syringes.

(i) Reusable or disposable syringes will be of the fixed needle or LUER-LOK type (or equivalent) to assure that the needle cannot separate during use.

(ii) After use, non-disposable glass syringes with attached needles contaminated with etiologic agents will be submerged in a container of decontaminant. Disposable syringes will be discarded with needles attached in puncture-proof rigid containers. Needles will not be recapped after use.

(iii) Sterilized or decontaminated containers marked "SYRINGES AND/OR NEEDLES" may be disposed of in appropriate refuse containers after proper packaging and destruction of the contents.

Note: Many states, especially those on the Eastern seaboard, have implemented strict requirements for the disposal of medical wastes. For example, the State of Maryland has designated all waste from a microbiological laboratory as hazardous waste with licensing requirements for disposal. There are rigid documentation requirements for generators of 50 kg/month or more of waste, while all medical waste released for transport off-site must be manifested to a State licensed medical waste hauler with the destination specified. Additionally, in some cases, the local government (e.g., city) regulates the disposal of these wastes. These requirements will be identified and followed.

Needles/syringes may not be destroyed by clipping. A mechanical shear may be used to smash or sheer needles after or concurrently with sterilization or decontamination.

(16) Refrigerators, deep freezers, and dry ice chests should be checked, cleaned out, and defrosted periodically to remove any ampules, tubes, etc., containing etiologic agents that may have broken during storage. Rubber gloves and respiratory protection appropriate to the materials in storage are recommended during cleaning. Do not store flammable solutions in non-explosion proof refrigerators.

(b) *Additional Techniques Applicable to Work with Viable Etiologic Agents.* The major objective of these techniques is to assist in protection against laboratory acquired infections. Air sampling studies have shown that aerosols are generated from most of the manipulations of bacterial and viral cultures common to research laboratories. The generation of aerosols during routine laboratory manipulations must be considered when evaluating the individual degree of risk, keeping in mind the four main factors governing infection: dosage, virulence of the organism, route of infection (e.g., skin, eyes, mouth, lungs), and host susceptibility (e.g., state of health, natural resistance, previous infection, response to vaccines and toxoids). The requirements stated below are minimum handling requirements to prevent accidental infection created by incidental aerosols.

(1) All procedures are performed carefully to minimize the creation of aerosols.

(2) No infectious mixtures will be prepared by bubbling air through a liquid.

(3) Pipettes.

(i) No infectious material will be forcibly ejected from pipettes. Only TD (to deliver) pipettes will be used.

(ii) Pipettes used with infectious or toxic materials will be plugged with cotton except where pipettes are used exclusively in a gas-tight cabinet system.

(iii) Contaminated pipettes will be placed horizontally in a rigid container containing enough disinfectant for complete immersion. Cylinders used for vertical discard are not recommended. The container and pipettes must be autoclaved as a unit and replaced by a clean container containing fresh disinfectant.

(iv) Pipetting devices must be used. Under no circumstances is mouth pipetting permitted.

(4) Syringes.

(i) The use of syringes and needles for making dilutions of etiologic agents is not recommended.

(ii) When removing a syringe and needle from a rubber stoppered bottle containing viable etiologic agents, an alcohol soaked pledget around the stopper and needle will be used.

(iii) Excess fluid and bubbles should be expelled from syringes vertically into a cotton pledget soaked with disinfectant, or into a small bottle containing disinfectant-soaked cotton.

(iv) The site of injection of an animal will be swabbed with a disinfectant before and after injection.

(v) After use, syringes contaminated with residual infectious fluid will be submerged in a container of disinfectant in a safety cabinet prior to removal for autoclaving. To minimize accidental injection of infectious material, the removable needles should remain on such syringes until after autoclaving. When possible, syringes with attached needles should be placed in a pan separate from that holding other discarded materials.

(vi) Caps will not be placed over needles until after disinfection. During recapping, procedures to prevent personnel injuries will be used.

(5) Centrifuges and Shakers.

(i) Before centrifuging, tubes, rotors, seals and gaskets will be checked for cleanliness and integrity. In low speed clinical-type centrifuges, a germicidal solution may be added between the tube and trunnion cup to disinfect the outer surfaces of both and to provide cushion against shocks that might otherwise break the tube. Metal or plastic tubes (other than nitro-cellulose) will be used.

(ii) Decanting from centrifuge tubes will be avoided. If decanting is necessary, the outer rim will be wiped with a disinfectant after decanting so that material on the lip cannot spin off as an aerosol. Centrifuge tubes will not be filled beyond the level recommended by the manufacturer.

(iii) Broth cultures will be shaken in a manner that avoids wetting the plug or cap.

(6) Water baths in which viable etiologic agents are incubated must contain a disinfectant. For cold water baths, 70 percent propylene glycol is recommended. The disinfectant should be changed frequently.

(7) When laboratory vacuum is used to manipulate viable etiologic agents, a secondary reservoir containing disinfectant and a HEPA filter must be employed to insure that the laboratory vacuum lines do not become contaminated.

(8) Test tubes:

(i) Tubes containing viable etiologic agents should be manipulated with extreme care. Studies have shown that simple procedures, such as removing a tube cap or transferring an inoculum, can create a potentially hazardous aerosol.

(ii) Manipulation of biohazardous test tubes will be conducted in biological safety cabinets. Tubes and racks of tubes containing biohazardous material should be clearly marked. It is the responsibility of the individual employee to insure that tubes containing biohazardous material are properly sterilized prior to disposal or glassware washing. Safety test tube trays should be used in place of conventional test tube racks to minimize spillage that might arise from broken tubes. When safety test tube trays are not used, the conventional test tube racks will be placed in a tray large enough to contain any potential spill. A safety test tube tray is one having a solid bottom and sides deep enough to hold all liquids, should a test tube break.

(9) Care should be exercised when using membrane filters to obtain sterile filtrates of viable etiologic agents. Due to the fragility of the membranes and other factors, such filtrates cannot be considered noninfectious until laboratory culture or other tests have proven their sterility.

(10) The preparation, handling, and use of dry powders of viable etiologic agents in open containers presents hazards of an unusual nature. The slightest manipulation of such powders can result in the generation of aerosols containing a high concentration of etiologic agents. Therefore, work with dry powders of etiologic agents in open containers should be carried out in gas-tight biological safety cabinets.

§ 627.12 Biosafety level 1.

(a) *General.* BL–1 operations follow the general techniques described in § 627.11 (a) and (b).

(b) *Additional Laboratory Requirement.* Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory. Examples of suitable containers are metal tubs with lids or plastic bags that are sealed and then placed inside a rigid container for transport.

(c) *Additional Animal Requirements.* (1) Bedding materials from animal cages will be removed in such a manner as to minimize the creation of aerosols and disposed of in compliance with applicable institutional or local requirements.

(2) Cages are washed manually or in a cagewasher. Temperature of final rinse water will be a minimum of 180 °F.

(3) Laboratory coats, gowns, or uniforms worn in animal rooms shall not be worn in other areas.

§ 627.13 Biosafety level 2.

(a) *General.* In addition to the general microbiological techniques stated in § 627.12, BL–2 operations include the following requirements:

(1) When etiologic agents are in use, a hazard warning sign incorporating the universal biohazard symbol is posted on the access door of the work area. The hazard warning sign identifies the etiologic agent, lists the name and telephone number of the Institute Director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

(2) Animals not involved in the work being performed are not permitted in the laboratory.

(3) Special care is taken to avoid skin contamination with the etiologic agents; gloves will be worn when handling etiologic agents or infected animals.

(4) All wastes from laboratories and animal rooms are decontaminated before disposal.

(5) Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles.

(6) Spills and accidents which result in a potential exposure to etiologic agents will be reported immediately to the Biosafety officer, the project leader and the Institute Director.

(7) Biological safety cabinets (Class I or II) will be used when:

(i) Procedures with a high potential for creating infectious aerosols are conducted.

(ii) High concentrations or large volumes of etiologic agents are used.

(8) Laboratory coats, gowns, smocks, or uniforms will be removed before leaving the animal facility or laboratory area.

(b) *Additional Animal Requirements.* (1) Cages must be decontaminated, preferably by autoclaving, before they are cleaned and washed.

(2) Approved molded masks are worn by all personnel entering animal rooms housing nonhuman primates.

(3) If floor drains are provided, the drain traps will be kept filled with water or a suitable disinfectant.

§ 627.14 Biosafety level 3.

(a) *General.* In addition to the requirements stated in §§ 627.12 and 627.13, the following requirements apply:

(1) Approved molded masks or respirators with HEPA filters are worn by all personnel in rooms housing infected animals.

(2) Protective clothing worn in a laboratory or animal room will be removed before exiting the laboratory or animal room.

(3) Clothing worn in laboratories and animal areas to protect street clothing will be decontaminated before being laundered.

(b) *Additional laboratory requirements:* (1) Laboratory doors will be kept closed.

(2) All activities involving etiologic agents will be conducted in biological safety cabinets (Class I, II, or III) or other physical containment devices within the containment module. No work in open vessels is conducted outside a biological safety cabinet.

(3) The work surfaces of biological safety cabinets and other containment equipment will be decontaminated when work with etiologic agents is finished. It is recommended that plastic-backed paper toweling be used on nonperforated work surfaces within biological safety cabinets to facilitate clean-up.

(c) *Additional Animal Requirements.* (1) Cages are autoclaved before bedding is removed and before they are cleaned and washed.

(2) Gloves are removed aseptically and autoclaved with other wastes before being disposed of or reused.

(3) Boots, shoe covers, or other protective footwear and disinfectant foot baths must be available and used when indicated.

(4) Personal protective clothing and equipment and/or other physical

containment devices are used for all procedures and manipulations of etiologic agents or infected animals. The risk of infectious aerosols from infected animals or their bedding shall be reduced by housing animals in partial containment caging systems as described in § 627.55.

(d) *Work with Biosafety Level 3 Etiologic Agents that Require Additional Secondary Containment.* Facilities in which work with certain viruses, for example, Rift Valley fever, yellow fever, and Venezuelan equine encephalitis, is conducted require HEPA filtration of all exhaust air prior to discharge from the laboratory. All persons working with those agents for which a vaccine is available should be immunized.

§ 627.15 Biosafety level 4.

Laboratory work at BL-4 must follow the requirements stated in §§ 627.12, 627.13 and 627.14 as well as the following:

(a) All activities are conducted in Class III biological safety cabinets or in Class I or II biological safety cabinets in conjunction with a one-piece positive pressure personnel suit ventilated by a life support system.

(b) Biological materials to be removed from the Class III cabinet or from the maximum containment laboratory in a viable or intact state must be transferred to a sealed non-breakable primary container, enclosed in a nonbreakable sealed secondary container, and removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

(c) No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperature or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

(d) Personnel may enter and leave the facility only through the clothing change and shower rooms. Personnel must shower each time they leave the facility. Personnel may use the airlocks to enter or leave the laboratory only in an emergency.

(e) Street clothing must be removed in the outer clothing change room and kept there. Complete laboratory clothing, including under-garments, pants and shirts or jumpsuits, shoes, and gloves, will be provided and must be used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the exit shower. When leaving the laboratory and before proceeding into the shower area, personnel must remove their laboratory clothing and store it in a locker or hamper in the inner change room.

(f) When etiologic agents or infected animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biohazard symbol must be posted on all access doors. The sign must identify the agent, list the name of the Commander or Institute Director or other responsible person(s), and indicate any special requirements for entering the area (e.g., the need for immunizations or respirators).

(g) Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated between each use. After securing the outer doors, personnel within the facility retrieve the materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

(h) Materials (e.g., animals and clothing) not related to the experiment being conducted are not permitted in the facility.

(i) Whenever possible, the use of any glass items should be avoided.

§ 627.16 Toxins.

The laboratory facilities, equipment and procedures appropriate for work with toxins of biological origin must reflect the intrinsic level of hazard posed by a particular toxin as well as the potential risks inherent in the operations performed. All toxins must be considered to pose a hazard in an aerosol form. However, most toxins exert their effects only after parenteral exposure or ingestion, and a few toxins present a dermal hazard. In general, toxins of biological origin are not intrinsically volatile. Thus, the laboratory safety precautions appropriate for handling these materials closely parallel those described for handling infectious organisms. The requirements in this section for the laboratory use of toxins of biological origin include the requirements in § 627.11(a) and the following:

(a) Vacuum lines. When vacuum lines are used with systems containing toxins, they will be protected with a HEPA filter to prevent entry of toxins into the lines (or sink drains when water aspirators are used).

(b) Preparation of concentrated stock solutions and handling closed primary containers of dry toxins. Preparation of primary containers of toxin stock solutions and manipulations of closed primary containers of dry forms of toxins will be conducted:

(1) In a chemical fume hood, a glove box, or a biological safety cabinet or equivalent containment system approved by the Safety Officer.

(2) While wearing eye protection if using an open-fronted containment system.

(3) Ensuring that gloves worn when handling toxins will be disposed of as toxin waste, with decontamination if required.

(4) With the room door closed and posted with a universal biohazard sign, or other sign indicating that toxin work is in progress. Extraneous personnel shall not be permitted in the room during operations.

(5) Ensuring that toxins removed from hoods or biological safety cabinets are double-contained during transport.

(6) After verification of hood or biological safety cabinet inward airflow is made by the user before initiating work.

(7) Within the operationally effective zone of the hood or biological safety cabinet.

(8) Ensuring that non-disposable laboratory clothing is decontaminated before release for laundering.

(9) Ensuring that all individuals who handle toxins wash their hands upon each exit from the laboratory.

(10) With two knowledgeable individuals present whenever more than an estimated human lethal dose is handled in a syringe with a needle. Each must be familiar with the applicable procedures, maintain visual contact with each other, and be ready to render assistance in the event of an accident.

(c) Manipulations with open containers of dry forms of toxins. Handling of dry forms of toxins in uncovered containers (e.g. during weighing) will be performed following the requirements stated in §§ 627.11(a), and 627.16(b) and (b) and the following:

(1) Manipulations will be conducted in a HEPA filtered chemical fume hood, glove box or biological safety cabinet. The exhaust may additionally be charcoal filtered if the material is volatile.

(2) When using an open-fronted fume hood or biological safety cabinet, protective clothing, including gloves and a disposable long-sleeved body covering (gown, laboratory coat, smock, coverall, etc) will be worn in such a manner that hands and arms are completely covered. Eye and approved respiratory protection is also required. The protective clothing will not be worn outside of the

laboratory and will be disposed of as solid toxin waste

(3) Before containers are removed from the hood, cabinet or glove box, the exterior of the closed primary container will be decontaminated and placed in a clean secondary container.

(4) When toxins are in use, the room will be posted to indicate "Toxins in Use—Authorized Personnel Only". Any special entry requirements will be posted on the entrance(s) to the room.

(5) All operations will be conducted with two knowledgeable individuals present. Each must be familiar with the applicable procedures, maintain visual contact with each other and be ready to render assistance in the event of an accident.

(6) Individuals handling toxins will wash their hands upon exit from the laboratory.

(d) Additional considerations of specific toxin properties. The following requirements are in addition to the requirements stated in the paragraphs above. Determine whether the material fits paragraph (b) or (c) of this section, and comply with the appropriate section and the following when applicable:

(1) When handling dry forms of toxins that are electrostatic.

(i) Gloves that facilitate the generation of static electricity (such as latex) will not be worn when handling dry forms of these toxins.

(ii) A glove bag within a hood or biological safety cabinet, a glove box, or a class III biological safety cabinet will be utilized when handling these materials.

(2) When handling toxins that are percutaneous hazards (irritants, necrotic to tissue or exhibit extreme toxicity by the dermal route of exposure).

(i) Gloves will be selected that are known to be impervious to the toxin and the diluent (when applicable) for the duration of the manipulations.

(ii) Disposable laboratory clothing will be worn, left in the laboratory upon exit, and disposed of as solid toxin waste.

(e) Aerosol exposures. The requirements found in paragraphs (a) and (b) of this section will be complied with plus the following:

(1) Chambers, nose-only exposure apparatus, and generation system must be placed inside a fume hood, glove box, or a Class III biological safety cabinet. Glove boxes and Class III biological safety cabinets will have HEPA filters on both inlet and outlet air ports.

(2) The atmosphere from within the exposure chamber will be HEPA filtered before release inside the hood, glove box or cabinet.

(3) All items inside the hood, glove box, or Class III biological safety cabinet will be decontaminated upon removal. Materials such as experimental samples that cannot be decontaminated directly will be placed in a closed secondary container, the exterior of which will be decontaminated and labeled appropriately. Animals will have any areas exposed to toxin wiped clean after removal from the exposure apparatus.

(4) The interior of the hood, glove box, or cabinet containing the chamber and all items will be decontaminated periodically, for example, at the end of a series of related experiments. Until decontaminated, the hood, box or cabinet will be posted to indicate that toxins are in use, and access to the equipment and apparatus restricted to necessary, authorized personnel.

§ 627.17 Emergencies.

(a) *Introduction.* All laboratories will establish specific emergency plans for their facilities. Plans will include liason through proper channels with local emergency groups and with community officials. These plans will include both the building and the individual laboratories. For the building, the plan must describe evacuation routes, facilities for medical treatment, and procedures for reporting accidents and emergencies. The plans will be reinforced by drills. Emergency groups and community officials must be informed of emergency plans in advance of any call for assistance. See AR 385–69.

(b) *General Emergency Procedures.* The following emergency procedures will be followed for laboratory accidents or incidents.

(1) Using appropriate personal protection, render assistance to persons involved, remove contaminated clothing if necessary, decontaminate affected areas, and remove them from exposure to further injury if necessary; do not move an injured person not in danger of further harm. Render immediate first aid if necessary.

(2) Warn personnel in adjacent areas of any potential hazards to their safety.

(3) In case of fire or explosion, call the fire department or community fire brigade immediately. Follow local rules for dealing with incipient fire. Portable fire extinguishers will be made available with instructions for their use. Fire fighters responding to the fire scene will be advised to wear a self-contained positive pressure breathing apparatus to protect themselves from toxic combustion by-products.

(4) Laboratories must be prepared for problems resulting from severe weather or loss of a utility service. In the event of the latter, most ventilation systems not supplied with emergency power will become inoperative. All potentially hazardous laboratory work must stop until service has been restored and appropriate action has been taken to prevent personnel exposure to etiologic agents.

(5) In a medical emergency, summon medical help immediately. Laboratories without a medical staff must have personnel trained in first aid available during working hours.

(6) For small-scale laboratory accidents, secure the laboratory, leave the area, and call for assistance.

(7) When handling mixed hazards (e.g., a substance or mixture that may be infectious and radioactive, or infectious and chemically toxic), respond with procedures addressing the greater hazard first, and then follow through with those for the lesser hazards to ensure that all appropriate steps have been taken.

(c) *Evacuation Procedures.* Building and laboratory evacuation procedures will be established and communicated to all personnel.

(1) Emergency alarm system.

(i) There will be a system to alert personnel of an emergency that requires evacuation of the laboratory or building. Laboratory personnel must be familiar with the location and operation of alarm equipment.

(ii) Isolated areas (e.g., cold, warm, or sterile rooms) will be equipped with an alarm or communication system that can be used to alert others outside to the presence of a worker inside, or to warn workers inside of the existence of an emergency that requires evacuation.

(2) Evacuation routes will be established and an outside assembly area for evacuated personnel must be designated. All individuals should be accounted for.

(3) Shut-down/Start-up procedures.

(i) Guidelines for shutting down operations during an emergency evacuation will be available in writing. Those guidelines will include procedures for handling and power failure emergency.

(ii) Written procedures will also be provided to ensure that personnel do not return to the laboratory until the emergency is ended. Those procedures must also contain start-up operations for the laboratory.

(iii) All shut-down/start-up procedures will be available to personnel and reviewed semi-annually.

(4) All aspects of the building evacuation procedure will be tested semi-annually through the use of drills.

(d) *Spills.*

(1) All areas where work with etiologic agents is performed will have designated personnel to respond to a spill and provide protective apparel, safety equipment, and materials necessary to contain and clean up a spill. Protective clothing requirements are described in § 627.30. Also, there will be supplies on hand to deal with the spill consistent with the hazard and quantities of the spilled substance.

(2) The Safety Officer will be notified immediately of all spills. The first line supervisor will ensure that proper clean-up techniques are employed.

(3) Etiologic agents.

(i) A program for responding to spills of etiologic agents will be developed and implemented. This program will contain emergency response procedures for a biological spill, which will be tailored to the potential hazard of the material being used, the associated laboratory reagents involved, the volume of material, and the location of the materials within the laboratory. Generally, the spill should be confined to a small area while minimizing aerosolization of the substance. The spill will be chemically decontaminated or neutralized, followed by a cleanup with careful disposal of the residue. If the spilled material is volatile and noninfectious, it may be allowed to evaporate but must be exhausted by a chemical hood or ventilation system.

(ii) When a mishap occurs that may generate an aerosol of etiologic agents requiring BL-2 (or higher) containment, the room must be evacuated immediately, the doors closed, and all clothing decontaminated, unless the spill occurs in a class II or class III biological safety cabinet. Sufficient time must be allowed for the droplets to settle and the aerosols to be reduced by the air changes of the ventilation system before decontaminating the area. The area will then be decontaminated to prevent exposure to the infectious agents or toxic substances. Reentry procedures to perform the decontamination will conform to § 627.17(e).

(iii) A spill of biohazardous material within a biological safety cabinet requires a special response and cleanup procedure. Cleanup will be initiated while the cabinet continues to operate, using an effective chemical decontaminating agent. Aerosol generation during decontamination, and the escape of contaminants from the cabinet, must be prevented. Caution must be exercised in the choice of decontaminant, keeping in mind that fumes from flammable organic solvents, such as alcohol, can reach dangerous concentrations within a biological safety cabinet.

(4) Combined radioactive/biological spills.

(i) Both the Radiation Protection Officer (RPO) and the Safety Officer must be notified immediately whenever there is a spill of radioactive biological material, regardless of its size. Laboratory personnel may be expected to clean up the spill. The RPO will direct the cleanup, in accordance with the Nuclear Regulatory Commission (NRC) license for the facility.

(ii) The spill will be cleaned up in a way that minimizes the generation of aerosols and spread of contamination. All items used in cleaning up the spill must be disposed of as radioactive waste.

(iii) Following cleanup, the area, affected protective clothing, and all affected equipment and supplies must be surveyed for residual radioactive contamination. All potentially affected areas and items that are not disposable will be wipe-tested to verify that unfixed radioactive contamination has been removed. If fixed contamination is found, the RPO will determine the requirements for additional cleanup.

(e) *Reentry Procedures.* This section applies when reentry is necessary to clean up a spill outside of a hood or biological safety cabinet, or to decontaminate or service engineering controls that failed or malfunctioned such that they do not provide the required containment.

(1) When agent(s) requiring BL-1 or BL-1 LS containment are involved, the clothing requirements stated in § 627.29 (a) or (b) as appropriate will be followed. Individuals will remove the required protective clothing when finished and wash their hands before proceeding to other tasks.

(2) When agent(s) requiring BL-2, BL-2 LS, or toxin procedures and containment are involved, personnel will be required to wear the clothing stated in § 627.29 (c) or (d) as appropriate. Outer protective clothing will be removed and left in the room before exiting and personnel will wash their hands before proceeding on to other activities.

(3) When agent(s) requiring BL-3, or BL-3 LS containment are involved, containers for sealing up inner protective clothing and decontaminant will be placed at the room exit before entering the room or suite. Personnel will be required to wear the clothing stated in § 627.29(e). When exiting the area after decontamination procedures, individuals will remove their outer layer of protective clothing just before exiting the room. Once outside the room the inner layer of protective clothing (e.g., coverall) will be removed and placed in the container and the inner gloves will be decontaminated before being removed and placed in the container. Personnel will proceed directly to the shower facility to take a complete shower before exiting the facility.

(4) When agents requiring BL-4 containment are involved, the following applies as appropriate to the type of BL-4 facility:

(i) When a spill requiring clean-up is in an area designed for use with personal positive pressure suits, the entry and exit procedures will be as normally required for entrance and exit from the area.

(ii) When entering a non-suit area where a spill of etiologic agent has occurred outside the containment of a Class III biological safety cabinet, personnel will wear the clothing as stated in § 627.29(f). Before entry, decontamination areas will be established. To accomplish this, two step-in decontamination pans with the appropriate disinfectant will be set up [one just inside the room (where the contamination exists) and the second immediately outside the room]. Immediately outside the room, there will also be a sealable container suitable for sealing up the suit and any air lines (if used). When exiting the room, suited individuals will place all equipment and other items in autoclaves or disinfectant, step into the disinfectant pan and wash down the exterior of their suits with appropriate disinfectant. When completed, the door to the room will be opened and the individual will step through the doorway into the second disinfectant pan. The suit will be thoroughly rinsed with disinfectant again before moving toward the exit from the facility. The suit (but not the respirator) will be placed in the provided container. The individual will proceed through another doorway before removing the respirator and placing it in a closed container for decontamination. The individual will then proceed directly to the shower area and take a full shower before exiting the area. In case they are needed, personnel will be standing by ready to render assistance. Suited individuals will be visually observed, if possible. When visual observation is not possible, a communications system is required.

(f) *Mishap Reports and Investigations.* (1) Each institution must have a defined system for reporting laboratory injuries, illnesses and mishaps, as well as for investigating them. These events will be documented and reported to the appropriate safety, supervisory and occupational health personnel. Those organizations subject to the regulations

promulgated by the Occupational Safety and Health Administration (OSHA) will follow the specific requirements for reporting injuries in the work place contained in those regulations. The requirements stated in AR 385–69, State, and local government requirements for similar reporting will be followed.

(2) Form(s) for recording mishaps will be available and completed for all laboratory mishaps. Those reports must include a description of the mishap and any factors contributing to the mishap. In addition, a description of any first aid or other health care given to the employee will be included. Responsibility for completing these forms must be clearly defined in the Facility Safety Manual. Mishaps will be reviewed periodically by the Safety Officer, the safety committee, the employee health unit, or other appropriate personnel. Individual reports or a summary must be sent, along with recommended changes in laboratory procedure or policy, to the Commander or Institute Director. Policy or procedural changes must be implemented if deemed necessary by the Commander or Institute Director.

(3) Any mishaps with etiologic agents used under sponsorship of the BDP that result in sero-conversion or a laboratory-acquired illness will be reported.

§ 627.18 Large scale operations.

(a) *Large Scale.* In addition to the requirements stated in § 627.12 the following applies to research or production activities involving viable etiologic agents in quantities greater than 10 liters:

(1) All large-scale operations will be conducted in facilities described in the appropriate part of section 627.46.

(2) Cultures will be handled in a closed system.

(3) Sample collection, the addition of materials, and the transfer of culture fluids shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

(4) A closed system or other primary containment equipment that has contained viable organisms shall not be opened for maintenance or other purposes unless it has been sterilized.

(5) Standing operating procedures (SOPs) will include a section describing and requiring a validation of the process equipment's proper function.

(6) Scientists, technicians, equipment workers, and support personnel with access to the large-scale production area when it is in operation will be included in the medical surveillance program.

(b) *Biosafety Level 2—Large Scale.* In addition to the requirements stated in §§ 627.18(a) and 627.13, the following procedures will be employed for Biosafety Level 2—Large Scale:

(1) Rotating seals and other mechnical devices directly associated with closed system used for the propagation and growth of viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventialated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

(2) A closed system used for the propagation and growth of viable organisms and other primary containment equipment used to contain operations involving viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Systems used for the propagation and growth of viable organisms shall be permanently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to the use of this equipment.

(c) *Biosafety Level 3—Large Scale.* In addition to the requirements stated in §§ 627.18(b) and 627.14., the following procedures apply:

(1) Personnel entry into the controlled area shall be through the entry area specified in § 627.46(c)(1).

(2) Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jumpsuits, long sleeved laboratory coats, pants and shirts, head cover, and shoes or shoe covers. On exit from the controlled area the work clothing may be stored in a locker separate from that used for personal clothing, or discarded for laundering. Clothing shall be decontaminated before laundering.

(3) Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program support needs.

(4) Prior to entry all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

(5) The universal biohazard sign shall be posted on entry doors to the controlled area and all internal doors. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter.

(6) Equipment and materials required for the management of accidents involving viable organisms shall be available in the controlled area.

(d) *Biosafety Level 4—Large Scale.* Guidelines for these operations are not established. If these are needed, they must be established by the U.S. Army Surgeon General or the National Institutes of Health on an individual basis.

§ 627.19 Operations with radioactive material.

Operations that combine etiologic agents with radiolabeled material present unique problems. When this is the case, the following apply:

(a) *Radiation Program.* A radiation program meeting the requirements of AR 385–11 and NRC licensure that allows the particular isotope and use are required. The requirements for acquisition, handling procedures, labeling, storage, training, monitoring, and disposal will be described in an organization policy document.

(b) *Procedure Approval.* In addition to the required approvals for work with etiologic agents, the RPO will approve all SOPs involving the use of radioactive materials. Laboratory operators must be fully trained, with annual training updates as required by the existing license.

(c) *Special Situations.* (1) Special attention must be paid to the laboratory waste because it must be segregated as radioactive waste and disposed of as such after it has been decontaminated. Do not mix non-radioactive waste with radioactive waste as the disposal of radioactive waste is much more complex and expensive. When RCRA-listed chemicals are mixed with radioactive waste it becomes "mixed waste" for which there is currently no means of disposal.

(2) Activities conducted with radioisotopes should be confined to the smallest number of areas/rooms consistent with requirements.

(3) Decontamination methods specific for etiologic agents will not always remove radioactivity. Other methods, such as specialized detergents and solvents designed for this use, should be employed to remove residual radioactivity.

Subpart D—Personal Protective Equipment

§ 627.20 Introduction.

Personal protective equipment (PPE) includes clothing and equipment used to protect the laboratory worker from contact with infectious, toxic, and corrosive agents, as well as excessive heat, fire, and other physical hazards. The appropriate PPE for any activity is dependent upon the proposed operations and the potential hazards associated with them. While PPE are important items of personal protection,

they are to be used with the understanding that they serve as a secondary line of protection against hazards in the workplace. Engineering controls (chapter B), combined with common sense, good laboratory techniques and adherence to SOP's, are the primary barriers to exposure. There are some situations, however, in which it is either impractical or impossible to rely exclusively on engineering controls. In these cases, PPE may form the primary barrier between personnel and the hazards or infectious materials.

§ 627.21 Minimum laboratory attire for use of etiologic agents.

Individuals required to wear PPE will be trained in their proper use. The PPE listed below are the minimum required when etiologic agents are handled at any Biosafety Level. Research with etiologic agents usually involves hazards other than those presented by the agents themselves. When selection of PPE is made, the hazards presented by these other factors must be considered regardless of the Biosafety Level used. For example, toxic chemicals are commonly used in research involving etiologic agents, the processes may expose personnel to physical hazards, such as heat or animal bites, and the decontamination process may involve the handling of toxic or corrosive materials. When the PPE required to mitigate these hazards exceeds that of the minimum requirements, the necessary PPE will be selected considering all of the hazards. Information regarding the additional appropriate PPE worn to protect against these hazards will be available from one of the following sources: Material Safety Data Sheets (MSDS), SOP for the operation, or the Safety Officer. Deviations from the standards stated in approved SOPs must be approved by the Safety Officer. All laboratory coats when worn for purposes of protection of the individual should be left in the laboratory when an individual leaves the laboratory. In each case, the minimum attire will be:

(a) *Laboratory Workers.* Street attire is permissible in the laboratory, but must include closed-toe shoes. A full-length, long sleeved, fully fastened laboratory coat, gown, or smock will be worn over the street attire in the laboratory at all times. The laboratory clothing will be removed and left in the laboratory when leaving to enter non-laboratory use areas.

(b) *Animal Caretakers.* In addition to the clothing requirements in paragraph (a) of this section, animal handlers will be provided with safety shoes or safety boots. The requirements of § 627.23(b) should also apply.

(c) *Non-human Primate Rooms.* Personnel entering rooms housing nonhumans primates will wear the clothing stated in paragraph (a) of this section and if applicable paragraph (b) of this section in addition to a molded mask or HEPA filtered respirator, latex or vinyl gloves, and eye protection.

§ 627.22 Biosafety level 1.

This level requires only the minimum attire described in § 627.21.

§ 627.23 Biosafety level 2.

This level requires the following additions to the minimum clothing specified in § 627.21:

(a) *Laboratory.* Gloves (type dependent on the application) will be worn when handling etiologic agents or containers of etiologic agents and when handling infected animals.

(b) *Animal Rooms.* (1) Protective clothing will be changed completely on a daily basis. One- or two-piece laboratory suits or solid-front gowns and wrap-around smocks are preferable. Full-length, long sleeved, fully fastened laboratory coats are allowed.

(2) Eye protection must be worn when handling non-human primates.

(3) Appropriate gloves must be worn.

(4) Molded masks or HEPA filtered respirators will be worn in rooms housing non-human primates.

§ 627.24 Biosafety level 3.

Because it is imperative that the outer clothing worn in these facilities not be worn outside the facility, color-coded clothing that is worn only in the facility is recommended to assist in precluding individuals from wearing this clothing outside the facility. The minimum clothing includes:

(a) *Laboratory.* (1) Long-sleeved, solid front, or wrap-around gowns, scrub suits, or coveralls over street attire which includes closed-toe shoes. Dedicated shoes, boots or shoe covers will be worn in the facility.

(2) Appropriate gloves.

(b) *Animal Rooms.* (1) A complete change of protective clothing on a daily basis. Long-sleeved one- or two-piece solid front uniforms, solid-front gown, wrap-around smocks, or solid front coveralls.

(2) Eye protection must be worn when handling non-human primates.

(3) Molded masks or HEPA filtered respirators will be worn in rooms housing infected animals.

(4) Shoe covers will be worn and removed before exiting the room; alternatively, disinfectant footbaths will be used for each exit from the room when infected animals are present.

§ 627.25 Biosafety level 4.

Street clothing must be removed in an outer clothing change room and kept there. Clothing worn in the facility will be removed in an inner change room and a shower taken before replacing the street clothing. Two distinct PPE requirements exist for BL-4 operations:

(a) *Class III Biological Safety Cabinet Containment.* Clothing requirements when all etiologic agents and infected animals are housed and manipulated in Class III biological safety cabinets will include:

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jump-suits, and shoes. While it is preferred that the shower include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves. The inner gloves will be donned in the change room.

(b) *Class I or II Biological Safety Cabinet Containment.* Clothing requirements for this level when etiologic agents are contained in Class I or II biological safety cabinets or equivalent partial-containment caging systems (for infected animals) (See §§ 627.55 and 627.56) include:

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jump-suits, and shoes. While it is preferred that the shower include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves will be donned in the change room.

(3) A one piece positive pressure suit described in § 627.30(g).

(4) Impervious boots fitted over the suit.

§ 627.26 Large Scale (LS) Operations.

The clothing requirements for these are the same as for the corresponding biosafety levels for laboratory operations.

§ 627.27 Solutions of toxins and dry forms of toxins in closed containers.

In addition to the minimum clothing specified in § 627.21 above, disposable gloves or gloves designed to be protective against the diluent will be worn when handling these materials.

§ 627.28 Dry forms of toxins handled in open containers.

In addition to the requirements stated in § 627.27 above, the requirements stated in § 627.16(c) apply.

§ 627.29 Situations specified in § 9627.17(e).

The clothing requirements for this section are for the emergency procedures specified in § 627.17(c). When these situations occur and there is no feasible or available means to adequately mitigate the potential hazard by engineering controls, the clothing requirements exceed those required for a properly conducted laboratory operation at an equivalent Biosafety Level. The protective equipment required will be selected based upon an assessment of the potential hazards that could be encountered. As a guide, the following clothing requirements are given. The selection of PPE will be based upon the highest possible level of contamination that could exist in the room. This will be based upon what is known about the operations that were conducted in the room during and prior to the current incident. In each situation, allowance will be made for the any aerosols to dissipate or settle before entry (approximately 30 min.). The following clothing requirements apply to these situations:

(a) *Biosafety Level 1.* (1) Gloves.

(2) Outer complete covering such as a pair of coveralls.

(3) Shoe covers, provided shoes, or safety shoes or boots.

(4) Eye protection (maintenance only).

(b) *Biosafety Level 1 Large Scale.* The same as described in § 627.29(a) with the following additions:

(1) An impervious apron.

(2) Impervious boots.

(c) *Biosafety Level 2 and toxins.* (1) Gloves.

(2) Full outer covering such as a coverall.

(3) Shoe covers, provided shoes, or safety shoes or boots (maintenance).

(4) An Approved half-face or full-face respirator with HEPA filters (worn).

(5) Eye protection.

(6) An impervious apron (not required for entry only).

(d) *Biosafety Level 2 Large Scale.* The same as § 627.29(c) with the addition of impervious boots.

(e) *Biosafety Level 3 and Biosafety Level 3 Large Scale.* (1) A complete change of clothing.

(2) Gloves.

(3) An approved full-face HEPA or HEPA plus charcoal filtered respirator.

(4) An impervious apron (not required for entry only).

(5) Impervious boots.

(6) Head cover.

(f) *Biosafety Level 4.* (1) A full change of inner clothing.

(2) An inner pair of gloves.

(3) A one piece positive pressure suit as described in § 627.30(g), or a one piece suit with an approved positive pressure self contained breathing apparatus (SCBA) and/or a supplied-air respirator (SAR) (see § 627.30(f)).

(4) Appropriate gloves fitted to the suit.

(5) Impervious boots fitted over the suit.

§ 627.30 Specific requirements for individual PPE items.

(a) *Aprons.* Simple plastic or rubber aprons.

(b) *Boots.* When boots are required to be worn with an apron, the apron should cover the boot tops sufficiently so that liquids splashed on the apron will not run into the boots.

(c) *Eye and Face Protection.* Eye protection will meet or exceed the requirements of OSHA found in the Code of Federal Regulations title 29 part 1910.133 and will be worn at all times when required. Special eye wear may be required around UV light source.

(d) *Gloves.*

(1) No one glove can be expected to be satisfactory for all applications. Gloves are fabricated in a wide assortment of materials. The type of glove selected will be dependent upon the specific activity. The various activities in biocontainment facilities call for gloves to protect against etiologic agents in situations where micro-manipulations are required and excellent tactile feed-back through gloves is important, gloves for handling hot glassware and cryogenic materials, and gloves to protect against animal bites, toxic substances, chemical carcinogens, solvents, acids, and caustics. Many of these requirements call for gloves distinctly different from gloves suitable for the other hazards. As a result, the SOP for each operation should address these hazards and specify the appropriate glove required for each operation. MSDSs, manufacturer glove charts, and the Safety Officer can serve as excellent resources to determine the correct glove type needed.

(2) Before donning a pair of gloves, the gloves should be examined closely to ascertain that they are in serviceable condition. Check for rips and pin holes. Gloves should overwrap the cuff and lower sleeve of the laboratory garment.

(3) Operations in open-front biological safety cabinets should be planned so that once gloved hands have been inserted into the cabinet, the operator does not have to withdraw them from the cabinet until the work has been completed. If gloves become visibly contaminated, they will be removed and decontaminated. Additional gloves should be available so that work can continue. When wearing gloves for an extended period, they should be changed periodically or decontaminated. Individual SOPs will designate this periodicity based upon the hazards.

(4) Gloves will be removed before going from one level of containment to another (remove gloves in a safety cabinet before removing your hands from the cabinet). Care will be taken to ensure that skin is not touched with the outer surface of contaminated or potentially contaminated gloves when they are removed. Gloves will be placed in suitable decontaminant when they are removed. Disposable gloves will be placed in a covered container for decontamination/disposal.

(5) Gloves that are a part of a biological safety cabinet system will be examined initially, after each sterilization of the biological safety cabinet system, and at least annually for leaks using the soap bubble test, followed by the halo-carbon test. Gloves will be tested while still attached to the cabinet.

(6) Sterilization of non-disposable gloves either before use or before reuse is usually done with ethylene oxide or formaldehyde gas. Sterilized gloves must be aerated in flowing sterile (filtered) air at 21°C or higher for a minimum of 24 hours prior to use to prevent skin burns and irritation from residual decontaminants.

(e) *Laboratory Clothing.* Clothing will be checked by the users before it is worn, to ensure that it is free from defects that would compromise its usefulness. Laboratory clothing (except BL–1) will be decontaminated before being released for laundering by untrained or unprotected personnel. Protective laboratory clothing that requires the personnel to pull it over the head will not be used. Laboratory clothing will meet OSHA requirements found in the title 29 Code of Federal Regulations (CFR) part 1910.132.

(f) *One-Piece Suits.* One-piece suits with a respirator under the suit are not used to any great extent except in certain emergencies. The respirators used with these are supplied air by an approved positive pressure SCBA, or SAR. Respirators will be of the pressure-demand or constant flow type. The air provided will meet OSHA requirements found in the Code of Federal Regulations title 29 part CFR 1910.134,

the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G–7.1 and ANSI Z88.1–1973. When used in an area that does not have a chemical shower to decontaminate the suit, a decontamination station will be set up for this purpose. Suits maintained for emergency use will be inspected at least quarterly and respiratory equipment will be inspected monthly.

(g) *One-Piece Positive Pressure Suits.* A life-support system will be provided with alarms and emergency backup breathing tanks. The air provided will be HEPA-filtered meeting OSHA requirements found in the CFR title 29 part 1910.134, the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G–7.1 and ANSI Z88.1–1973. A HEPA-filter will be in-line between the disconnect on the suit and the breathing space in the suit. When these are used in other than an emergency situation, a chemical shower must be provided to decontaminate the surfaces of the suit as the worker leaves the containment area. Suits will be inspected before each use to check for indications of significant wear or leakage. The suits will be worn with impervious boots over the foot area of the suit and the outer gloves will be attached over the hand portion.

(h) *Respiratory Protection Equipment.* (1) Respirators and their use will be approved by the Safety Officer. The selection will be made with knowledge of the conditions of the activities and the risks involved. In general, NIOSH-approved respirators that use aerosol filters for dusts and fumes having a Threshold Limit Value (TLV) of less than 0.05 mg/m^3 have been found acceptable for use in microbiological laboratories. Alternatively, the Army M–17 or M–9 masks may be used. Air-supplied hoods are used in situations where greater respiratory protection is required without the need for body protection. One-piece suits are used when total body and respiratory protection are required.

(2) When respirators are used, a respirator protection program will be established that conforms to AR 11–34 and OSHA standards in the CFR title 29 part 1910.134. In general, the wearers will be approved to wear them by a medical authority, respirators will be fitted to individuals trained in their use and limitations, and these individuals will be responsible for the proper storage and regular inspection of their assigned respirators. Air-purifying respirators will not be worn in oxygen deficient environments.

(3) Reusable respirators that have been worn in a contaminated area will be decontaminated before reuse. At the end of each work day when a respirator has been worn in an area where it was required, personnel will wipe down their respirator with an appropriate liquid decontaminant. A damp cloth soaked in the decontaminant, with the excess liquid squeezed out, will be used for the wipe-down process, taking care to ensure that all crevices are reached. The respirator will be rinsed with clean, warm water. Visibly contaminated respirators will be decontaminated and discarded.

(4) Respirator programs will comply with AR 385–10 and AR 11–34.

(i) *Shoes.* All shoes specially issued for use in controlled access areas should be identified so that they can be segregated from other areas. Safety shoes or boots meeting OSHA requirements stated in the CFR title 29 part 1910.134 will be issued wherever heavy items or corrosive chemicals are handled. These will be sterilized appropriately after visible contamination. In certain situations (excluding BL–4 operations), it is desirable to wear disposable booties over street shoes, especially when product protection is required.

(j) *Deluge showers and eye.*

Subpart E—Decontamination and Disposal

§ 627.31 Introduction.

All material or equipment that is potentially contaminated with etiologic agents must be rendered nonhazardous before disposal. This chapter describes the acceptable physical and chemical decontamination methods and the general applicability of each. In general, all infectious materials and all contaminated equipment or apparatus will be sterilized before being washed and stored, or discarded.

§ 627.32 Methods of decontamination.

(a) *Autoclave.* The use of wet heat is the most dependable procedure for the destruction of all forms of microbial life. An autoclave employs saturated steam under a pressure of approximately 15 psi to achieve a chamber temperature of at least 121 °C for a minimum of 15 minutes. The time is measured after the temperature of the material being sterilized reaches 121 °C. Other combinations of temperature and pressure (some of which are dependent of the equipment used) can be used to accomplish sterilization provided that the efficacy of sterilization is validated as described below. The most critical factor in ensuring the reliability of this sterilization method, other than proper temperature, is the prevention of entrapment of air that is not replaced by steam. Material to be autoclaved must come in contact with steam and heat and as a result, it may be necessary to add water to a load of waste to aid in the formation and penetration of steam. Autoclaves use either a steam-activated exhaust valve that remains open during the replacement of air by live steam until the steam triggers the valve to close, or a precycle vacuum to remove air prior to steam introduction.

(b) Sterilization will be verified through the use of biological indicators (e.g., Bacillus stearothermophilus spores) at locations throughout the autoclave, to include placement in the center of test loads, when the autoclave is first put into service, and after any maintenance or repairs. The primary means of verifying routine sterilization will be through the use of chemical indicators (e.g., autoclave tape or labels) at locations throughout the autoclave. In addition each autoclave will be equipped with a means to permanently to record time and the temperature of each operational event as a means of ensuring sterilization. The type of materials being handled must be reviewed and standard conditions for sterilization of each established. As a guide, the manufacturer's manual for the autoclaves will be consulted as a starting point in establishing these conditions. Treatment conditions to achieve sterility will vary in relation to the volume of material treated, the contamination level, the moisture content and other factors that should be considered and which may be cause to lengthen the times. In each case the conditions will be established based on tests which verify that the conditions selected are effective. In addition to being effective for viable agents, autoclaving effectively inactivates most protein toxins.

(c) *Dry Heat.* Dry heat requires longer times and/or higher temperatures than wet heat. If used, the specific sterilization times and temperatures must be determined for each type of material being sterilized. In general, sterilization by dry heat can be accomplished at 169–170 °C for periods of 2–4 hours. Higher temperatures reduce the time requirements. The heat transfer properties and spatial relation or arrangement of materials in the load are critical in ensuring effective sterilization.

(d) *Liquid Disinfectants.* Liquid disinfectants may be used in surface treatment, in dip tanks, and, at sufficient concentration, as sterilants of liquid

waste for final disposal. If liquid disinfectants are used, they must have been shown to be effective against the organisms present. Important considerations include: temperature; time of contact, pH; concentration and state of dispersion; penetrability; and reactivity of organic material at the site of application. Small variations in these factors may make large differences in the effectiveness of disinfection, so complete reliance should not be placed on liquid disinfectants when the end result must be sterility. If evidence of efficacy under the proposed has not been reported previously, preliminary studies to verify the efficacy of liquid disinfectants must be conducted. Such studies may include attempts to recover and quantitate the agent in question from liquid or swab samples, or sealed patches, by animal inoculation, plaque assay, agar or broth cultivation, etc., following controlled decontamination under the same experimental conditions envisioned for the proposed studies.

(1) *Alcohol.* Ethyl or isopropyl alcohol at a concentration of 70–85% by weight will denature proteins but is slow in its germicidal action. Alcohols are effective disinfectants for lipid-containing viruses. These alcohols exhibit no activity against bacterial spores.

(2) *Phenolic Compounds.* These are effective disinfectants against vegetative bacteria, including Mycobacterium tuberculosis, fungi and lipid-containing viruses. The phenolics are not effective against bacterial spores or non-lipid-containing viruses. The concentrations used will be in accordance with the manufacturer's recommendations.

(3) *Formaldehyde Solutions.* Formaldehyde in solution at a concentration of 8 percent (formalin) is effective against vegetative bacteria, spores, and viruses. It loses considerable disinfectant activity below room temperature. Due to the toxic properties of formaldehyde, the use of formalin is restricted to surfaces or materials that are contained within appropriate engineering controls.

(4) *Quaternary Ammonium Compounds.* These cationic detergents are strongly surface-active. They lose effectiveness in the presence of proteins and are neutralized by anionic detergents, such as soap. At low concentrations, they are bacteriostatic, tuberculostatic, sporostatic, fungistatic, and algistatic. At medium concentration, they are bactericidal, fungicidal, algicidal, and virucidal against lipophilic viruses. They are not tuberculocidal, sporicidal, or virucidal against hydrophilic viruses, even at high concentrations. The manufacturer's recommended dilution will be used.

(5) *Chlorine.* Sodium hypochlorite is normally used as a base for chlorine disinfectants. Free available chlorine is the active ingredient and, at concentrations of at least 2,500 ppm (0.25 percent), is a disinfectant that is active against most microorganisms and bacterial spores. Chlorine solutions at 2.5% free available chlorine are effective against most toxins. Chlorine solutions lose strength if exposed to air, so fresh solutions must be prepared whenever the free chlorine content falls below desired minimums.

(6) *Iodine.* The characteristics of chlorine and iodine are similar. Iodophor compounds with 1,600 ppm free available iodine provide a relatively rapid inactivation of all microorganisms, including some bacterial spores. A commonly available iodophor is Wescodyne. The manufacturer of Wescodyne recommends a range of dilution from 1–3 ounces per 5 gallons of water, giving a solution containing from 25–75 ppm of free iodine. At these concentrations, available iodine may be rapidly taken up by any extraneous protein present and will not be an effective sporocide. A solution providing 1,600 ppm iodine is recommended for hand washing or for use as a sporocide.

(7) *Mercurials.* Although the mercurials exhibit good activity against viruses, they are toxic and are not recommended for general use. They have poor activity against vegetative bacteria and are totally ineffective sporicides. The dilution recommendations stated by the manufacturer will be followed.

(e) *Vapors and Gases.* Formaldehyde, ethylene oxide, peracetic acid, beta-propiolactone, methyl bromide, and glutaraldehyde have all been used successfully as space sterilants where they can be employed in closed systems and with controlled conditions of temperature and humidity. Of these, methyl bromide, beta-propiolactone, and glutaraldehyde are not recommended because of their toxic properties. Peracetic acid can readily decompose with explosive violence in a concentrated state and must be used only in a diluted state and with extreme care. Formaldehyde and ethylene oxide are both regulated by OSHA for their potential human carcinogenicity, but do have permissible exposure levels (unlike beta-propiolactone, for example) and can be used safely under controlled conditions.

(1) *Formaldehyde.* Formaldehyde gas is, in general, the chemical of choice for space disinfection. Biological safety cabinets and associated effluent air-handling systems and air filters, incubators, laboratory rooms, buildings, or other enclosed spaces can be disinfected with formaldehyde. The procedures found in appendix E of the National Sanitation Foundation Standard Number 49 will be followed for the disinfection of biological safety cabinets. Other enclosures or areas will be disinfected by following the same principles. To disinfect rooms, the generation of formaldehyde gas from heating powdered or flake paraformaldehyde is the preferred method. When area decontamination is performed, use 0.3 grams of paraformaldehyde for each cubic foot of space to be treated. The room or area must be above 70 °F, the relative humidity above 70%, and the exposure time at least two hours (overnight is preferred). After the required time for disinfection, the room must be cleared of the formaldehyde gas (a small room with nonporous surfaces and no materials or equipment in the room can be cleared of all detectable formaldehyde by aeration for one hour, while larger areas with equipment in them may take a full day). Before formaldehyde is used as a space disinfectant, the area to be treated must be surveyed to ensure that there are no open containers of any acidic solution containing chloride ion in order to prevent the possible formation of bis(chloromethyl)ether, a human carcinogen. Specific OSHA requirements for posting of rooms and equipment, personnel protection, and other requirements are found in 29 CFR 1910.1048.

(2) *Ethylene oxide.* Ethylene oxide (EtO) sterilization will only be conducted in s sterilizer designed for that purpose and designed to maintain potential exposure levels below the current OSHA standard. EtO is effective against all microorganisms, including spores, molds, pathogenic fungi, and highly resistant thermophilic bacteria. All materials to be used in contact with human skin (e.g., clothing, shoes, masks, adhesive tape) must be aerated for at least 24 hours after sterilization and prior to use. Concentrations of 500–1000 ppm are required for sterilization. Specific OSHA requirements for the use of ethylene oxide are found in 29 CFR 1910.1047.

(f) *Ultraviolet Radiation.* Ultraviolet (UV) radiation at a wave length of 253.7 nanometers is a practical method for inactivating airborne viruses, mycoplasma, bacteria, and fungi. The usefulness of UV radiation on exposed surfaces is limited by its low penetrating

power. UV radiation shall only be relied upon for the sterilization of surfaces when conventional methods, such as autoclaving or the use of liquid disinfectants, would make the product unusable. An example is data sheets that must be brought out of a biocontainment facility. The UV intensity must be at least 40 microwatts/cm^3 on the surface to be treated. Single sheets of paper may be treated by exposing them to this radiation for a minimum of 15 minutes. A calibrated photoelectric UV intensity meter, capable of measuring UV radiation at a wave length of 253.7 nanometers, will be used whenever a new UV source is installed, and quarterly thereafter, to ensure the UV source is providing at least 40 microwatts/cm^3 at the work surface. Routine cleaning of bulbs to remove any accumulated dust is recommended to prolong bulb performance and assure proper energy output. Protective eye wear and clothing may be necessary when working around UV radiation.

§ 627.33 Disposal.

Inactivation is the first step in the disposal of etiologic agents or materials that are potentially contaminated with them. All contaminated or potentially contaminated materials must be effectively disinfected or sterilized by an approved procedure discussed in § 627.32. After decontamination, reusable items, such as clothing or glassware, may be washed with other non-contaminated or decontaminated items.

(a) *Combustible Items.* Combustible disposable items should be bagged and incinerated in an appropriate approved incinerator or otherwise disposed of in accordance with state and local regulations.

(b) *Non-combustible disposable items.* Items will be packaged as stated in paragraph (e) of this section and disposed of by a licensed waste hauler.

(c) *Equipment.* Equipment that cannot be autoclaved will be decontaminated by gaseous sterilization or with a suitable liquid disinfectant. Such equipment will be certified as decontaminated by the safety officer.

(d) *Waste.* Materials generated, such as solvents, acids, chemical carcinogens, radioactive isotopes, medical waste, or dead animals must be decontaminated, packaged, and then disposed of in accordance with EPA, NRC, local, state and Federal regulations.

(e) *Mixed Waste.* When two or more hazardous materials are mixed together, the mixture will be decontaminated and disposed of in accordance with EPA, NRC, state and Federal regulations for the mixture, or for the most hazardous material.

(f) *Packaging.* Solid waste will be placed in cans, sturdy bags or boxes. Rigid, puncture-resistant, sealable containers will be used for packaging "sharps". When wet materials are packaged for disposal, the materials will be placed in a leak-proof container. Heavy waste will be placed in rigid containers ensuring that the burst strength of the container is not exceeded.

(g) *Labeling.* A method of verifying that all items prepared for disposal have been decontaminated will be established for etiologic agent wastes. Mixed waste will be labeled as appropriate to indicate the hazards that must be addressed after decontamination.

(h) *Record keeping.* Manifest will be initiated and maintained, where required, to record the disposition and transfer of waste. Applicable Federal, state, and local ordnance will be followed.

Subpart F—Importation, Shipment, and Transport of Etiologic Agents

§ 627.34 Introduction.

The Centers for Disease Control (CDC) of the Public Health Service (PHS), the United States Department of Agriculture (USDA), the Food and Drug Administration (FDA), the Department of Transportation (DOT), the United States Postal Service and the International Air Transport Association (IATA), regulate the importation, shipment, and transportation of etiologic agents. This chapter outlines the minimum administrative requirements the Commander or Institute Director are to follow and gives resources for information on the requirements for importation, packaging, labeling, and shipment of etiologic agents.

§ 627.35 Administration.

The Commander or Institute Director will establish the following controls to ensure that etiologic agents are transported with proper authorization, controls, and procedures:

(a) Institute policies will be established in writing to ensure that before etiologic agents are acquired or shipped:

(1) The Division chief responsible for the area where work with etiologic agents is to be conducted approves all acquisitions or shipments.

(2) The Safety Officer is informed in writing of the type and amount of any BL–4 or USDA-restricted etiologic agent (listed in HHS publication No. (NIH) 88–8395 or current edition) being received, and the estimated date of arrival.

(3) The recipient of all etiologic agents shipped from an institute will be documented.

(4) The Commander or Institute Director approves all acquisitions and shipments of BL–4 or USDA-restricted etiologic agents.

(5) The Commander or Institute Director approves all requests for shipments to or from foreign countries and to individuals not affiliated with an institution or agency (e.g., physicians in private practice).

(6) The Office of The Surgeon General U.S. Army or the Commander, Army Material Command (AMC) approves the initial acquisition and use of all reference stocks of etiologic agents and transfers between Army RDT&E activities in accordance with AR 70–65.

(7) There is full compliance with the regulatory requirements referenced in §§ 627.35, 627.36, 627.37 and 627.38.

(8) The following information will be kept on file for 10 years, regarding the recipient and the intended use of BL–4 and USDA-restricted animal pathogens. This information will also be kept for all shipments to or from foreign countries and to individuals not affiliated with an institution or agency (e.g., physicians in private practice).

(i) The requester's name and address.

(ii) The type and amount of the etiologic agent to be sent.

(iii) The qualifications of the recipient of the etiologic agent.

(iv) The intended use of the etiologic agent.

(v) A statement indicating that the agent is not for human use.

(b) Etiologic agents assigned to Biosafety level 1, 2, or 3 approved for shipment and properly labeled and packaged may be shipped by commercial cargo carriers.

(c) All etiologic agents assigned to BL–4 or USDA-restricted animal pathogens approved for shipment and properly packaged, will be accompanied by a designated courier, or under close supervision of a responsible party who will monitor aspects of the shipment, ensuring that required transfers have been completed and documented and final receipt has been accomplished and acknowledged.

§ 627.36 Importation directives.

Importation of etiologic agents is subject to the Public Health Service Foreign Quarantine Regulations (42 CFR, part 71, § 71.156). Permits authorizing the importation or receipt of regulated materials and specifying conditions under which the etiologic agent is

shipped, handled, and used are contained in appendix E to this part.

§ 627.37 Shipment directives.

Shipping unmarked and unidentified etiologic agents is prohibited. Etiologic agents will be packaged, labeled, and shipped according to the requirements found in the Interstate Shipment of Etiologic Agents (42 CFR, part 72) and its amendments. The USDA regulations in 9 CFR, parts 102–104, and part 122 and the FDA regulations in 21 CFR, parts 312 and 600–680 will also be followed as applicable. Packaging and labeling requirements for interstate shipment of etiologic agents are summarized and illustrated in appendix D. Permits authorizing the shipment of regulated materials and specifying conditions under which the etiologic agent is shipped, handled, and used are contained in appendix E to this part.

§ 627.38 Transportation directives.

The packaging and labeling requirements cited above must be followed for the local transport of etiologic agents and diagnostic specimens by courier or by other delivery services. Similar requirements and restrictions applicable to the transport of etiologic agents, diagnostic specimens, and biological products by all modes of transportation (i.e., air, motor, rail, and water) are imposed by the Department of Transportation (49 CFR part 173), IATA "Dangerous Goods Regulations", the Air Transport Association "Restricted Articles Tariff 6–D", the International Civil Aviation Organization (ICAO), Postal Bulletin No. 21246 "International Mail-Hazardous Materials", 39 CFR and, the Domestic Mail Manual. When shipments exceed 4 liters, the requirements found in AR 740–32 will be followed.

§ 627.39 Additional requirements.

Additional requirements for importation, shipment, and transportation of infectious agents and hazardous materials that must be followed are contained in the following directives:

(a) AR 40–12, Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.

(b) AR 70–65, Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities.

§ 627.40 Sources for further information on shipment of etiologic agents.

(a) Guide for Transportation of Hazardous Materials, Vol. 4(1). February 10, 1975. Copies are obtained from the Office of Research Grants Inquiries, NIH, Department of Health, Education, and Welfare, 5333 Westbard Avenue, Bethesda, MD 20205.

(b) The Centers for Disease Control, Office of Biosafety, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone (404) 639–3883, or FTS: 236–3883.

(c) The American Type Culture Collection (ATCC), Packaging and Shipping of Biological Materials at ATCC. Copies are obtainable from the ATCC, 12301 Parklawn Drive, Rockville, MD. 20852. Phone (301) 881–2600.

(d) National Committee for Clinical Laboratory Standards (NCCLS), Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents (H5–A2), Second edition, Vol. 5, No. 1. Copies are obtained from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.

Subpart G—Facilities

§ 727.41 Introduction.

The design of the facility is important in providing a secondary barrier to protect individuals inside and outside the facility. Because the hazards presented by various organisms and materials vary, the requirements for the facility varies accordingly. These minimum facility requirements are described below for the various biosafety levels and toxins. The biosafety levels correspond to those described in the HHS Publication *Biosafety in Microbiological and Biomedical Laboratories* (HHS No. (NIH) 88–8395), while the large scale biosafety levels were adapted from those described in the NIH *Guidelines for Research Involving Recombinant DNA Molecules.*

§ 627.42 Biosafety level 1.

(a) *Laboratories.* Each laboratory used for this level will, as a minimum, have the following features:

(1) A sink for handwashing.

(2) Work surfaces that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(3) Fly screens on any windows that can be opened.

(4) Furnishings and surfaces that are sturdy and designed to be easily cleaned.

(5) Spaces between furnishings and equipment will be accessible for cleaning.

(b) *Animal facilities.* Each room will have the following features:

(1) Designed and constructed to facilitate cleaning and housekeeping.

(2) A sink for handwashing within the facility.

(3) Fly screens on any windows that can be opened.

(4) Ventilation designed so that the direction of airflow in the animal facility is inward, with the exhausted air discharged to the outside without being recirrculated.

(5) Self-closing doors that open inward.

§ 627.43 Biosafety level 2.

(a) *Laboratories.* Each laboratory used for this level of hazard will have, in addition to the requirements stated in § 627.42(a), the following:

(1) An autoclave available.

(2) Containment equipment necessary for the operations unless the Biosafety Officer approves the use of a compensatory level of personal protective equipment.

(3) An eyewash available near the laboratory.

(b) *Animal Facilities.* In addition to the requirements stated in § 627.42(b), facilities will include:

(1) A sink for handwashing in each room where animals are housed.

(2) An autoclave available in the building.

(3) Appropriate containment equipment unless the Biosafety Officer approves the use of a compensatory level of personal protective equipment.

§ 627.44 Biosafety level 3.

(a) *General Requirements.* Each suite used as a laboratory or in which infected animals are housed will, as a minimum, have the following features:

(1) Physical separation from areas which are open to unrestricted traffic.

(2) All entrances to each laboratory or animal room from the non-laboratory access corridors will be through two sets of doors. A change room or airlock may be incorporated between the doors.

(3) The interior surfaces of walls, floors, and ceilings will be water resistant so that they may be easily cleaned.

(4) All penetrations into the walls, floors, and ceilings should be sealed or capable of being sealed to facilitate decontamination.

(5) A foot, elbow, or automatically operated sink will be located near the exit door to each laboratory or animal room.

(6) An autoclave should be in each laboratory or animal room and will be available to the facility.

(7) A ventilation system that will:

(i) Create directional airflow that draws air into the laboratory through the entry areas.

(ii) Not recirculate laboratory air.

(iii) Discharge the exhaust air from the laboratory to the outside and will disperse the exhaust air away from occupied areas and air intakes.

(iv) Exhaust the HEPA-filtered air from Class I or II biological safety cabinets or other primary containment devices directly to the exterior of the laboratory or through the building exhaust system. Exhaust air from the cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every twelve months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (e.g., thimble unit connection) that avoids any interference with the air balance of the cabinets or the building exhaust system.

(8) All windows to the facility will be sealed shut.

(9) Appropriate biological safety cabinets and/or other specialized containment equipment will be provided.

(10) Any vacuum line in the facility will have a HEPA filter and liquid disinfectant trap.

(11) Bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(12) Furnishings that are sturdy and spaces between benches, cabinets, and equipment that are accessible for cleaning.

(13) An eyewash available in or near the laboratory.

(b) *Additional Animal Facility Requirements.* In addition to the requirements given above in §§ 627.43(b) and 627.44(a), all doors to the animal rooms will open inward and be self-closing.

§ 627.45 Biosafety level 4.

The engineering controls within the facility must provide absolute biological containment. All procedures with etiologic agents requiring this biosafety level of facilities, equipment and procedures must be conducted either in Class III biological safety cabinets, or in a facility that is designed for the use of a personal positive pressure suit as described in paragraph (b) of this section in conjunction with Class I or II biological safety cabinets.

(a) *General Requirements.* The facility will have the following features:

(1) A separate building or a clearly demarcated and isolated area within a building which incorporates positive personnel control for access.

(2) All entrances from access corridors incorporate an inner and outer change room.

(3) Inner and outer change rooms separated by a shower facility.

(4) A double-doored autoclave, fumigation chamber, or ventilated airlock for passage of all items which do not enter the facility through the change room.

(3) Interior surfaces of walls, floors, and ceilings resistant to water and chemicals to facilitate cleaning and disinfecting.

(4) Walls, floors, and ceilings of the facility constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof.

(5) All penetrations into the walls, floors, and ceilings sealed.

(6) All liquid drains in the facility connected directly to a liquid waste decontamination system.

(i) Holding tanks collecting waste from sinks, biological safety cabinets, floors, and autoclave chambers provide decontamination by heat treatment.

(ii) Holding tanks collecting waste from shower rooms and toilets provide decontamination by heat or chemical disinfectant methods.

(7) Sewer and other ventilation vents contain in-line HEPA filters.

(8) Internal facility appurtenances (e.g., light fixtures, air ducts, and utility pipes) arranged to minimize the horizontal surface area on which dust can settle.

(9) A foot, elbow, or automatically operated handwashing sink located near the exit door to each laboratory or animal room.

(10) Self-closing and lockable access doors.

(11) A ventilation system that:

(i) Is dedicated to the facility and provided fresh air meeting ASHRAE Standard 62.

(ii) Maintains a negative pressure differential and assures flow inward from areas outside of the facility toward areas of highest potential risk.

(iii) Has manometers or magnehelic gages to provide, sense, and display pressure differentials between adjacent areas maintained at different pressure levels. An alarm will sound when the pressures fall below acceptable levels.

(iv) Has the air supply and exhaust interlocked to ensure that exhaust failure or reduction will not allow the air pressure in the area to become positive to the adjacent areas.

(v) Does not recirculate exhaust air.

(vi) Is HEPA-filtered and discharged to the outside, dispersing the exhaust air away from occupied areas and air intakes. Has the HEPA filters on the exhaust located as near to the rooms as is practicable.

(vii) Has the filter chambers designed to allow in-place decontamination before the filters are removed and to facilitate certification testing.

(ix) Contains pre-filters and HEPA filters in the air supply system to protect the air supply system should air pressures become unbalanced.

(x) Exhausts the HEPA-filtered air from Class I or II biological safety cabinets directly into the laboratory or to the exterior of the building. If the HEPA-filtered exhaust from these cabinets is recirculated, the cabinets are tested and certified every 6 months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (e.g., thimble unit connection) that avoids any interference with the air balance of the cabinets or the building exhaust system.

(xi) Passes the treated exhaust air from Class III biological safety cabinets through two sets of HEPA filters in series to the exterior of the facility through the laboratory exhaust air system.

(12) Windows (if present) sealed shut and breakage resistant.

(13) Has a double-doored autoclave for decontaminating materials passing out of the facility. The autoclave door that opens to the area external to the facility is sealed to the outer wall and automatically controlled so that it can only be opened after the autoclave sterilization cycle has been completed.

(14) Has a pass-through dunk tank, fumigation chamber, or an equivalent decontamination method for materials and equipment that cannot be autoclaved.

(15) Has central vacuum systems (if present) that:

(i) Do not serve areas outside the facility.

(ii) Have an in-line HEPA filter placed as near as practicable to each use point or service cock.

(iii) Have filters designed to allow in-place decontamination and replacement.

(16) Liquid and gas service to the facility provided with protective devices that prevent backflow.

(b) *Additional Requirements for Personal Positive Pressure Suit Areas.* If personal positive pressure suits are worn in lieu of using Class III biological safety cabinets for containment, a special suit area will be provided. The suit area will provide the following, in addition to the requirements stated in paragraph (a) of this section:

(1) An exhaust system dedicated to that area that provides filtration by two

sets of HEPA filters installed in series. This system will be backed up by a duplicate filtration unit, exhaust fan, and an automatically starting emergency power source. The ventilation system will maintain the suit area under negative pressure relative to the surrounding areas.

(2) An entry area consisting of an airlock fitted with airtight doors.

(3) A chemical shower to decontaminate the surface of the personal positive pressure suit upon exit.

(4) An air supply and distribution system to support the life support system of the personal positive pressure suits.

(5) Emergency lighting and communications systems.

(6) Sealed penetrations into the internal shell of the area.

(7) A double-doored autoclave to decontaminate waste materials to be removed from the suit area.

(c) *Additional Laboratory Requirements.* In addition to those given in § 627.44, if water fountains are provided, they will be foot operated and located in the facility corridors outside the laboratory.

(d) *Additional Animal Facility Requirements.* In addition to those requirements given in § 627.44, all animal facility external doors will be self-locking.

§ 627.46 Large scale facilities.

The following requirements apply to facilities in which an individual culture of viable etiologic agents exceeds 10 liters:

(a) *Biosafety Level 1 Large Scale.* In addition to the laboratory requirements stated in § 627.42(a), the exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (e.g., incineration) to minimize the release of viable organisms.

(b) *Biosafety Level 2 Large Scale.* In addition to the requirements stated in § 627.43(a) and paragraph (a) of this section:

(1) Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiences equivalent to HEPA filters or through equivalent treatment devices.

(2) A closed system used for the propagation and growth of viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Closed systems used for the propagation and growth of viable organisms shall be tested operationally for integrity of the containment features. The containment will be rechecked following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

(c) *Biosafety Level 3 Large Scale.* The requirements stated in § 627.45 and paragraph (b) of this section apply, and all closed systems and other primary containment equipment used in handling cultures of viable organisms shall be located within a controlled area which meets the requirements of a BL–3 facility plus the following requirements:

(1) All utilities and service or process piping or wiring entering the controlled area shall be protected against contamination.

(2) A shower facility shall be provided. This facility shall be located in close proximity to the controlled area.

(3) The controlled area shall be designed to preclude release of culture fluids outside the controlled area in the event of an accidental spill or release from the closed systems or other primary containment equipment.

(4) The controlled area shall have a ventilation system that is capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall operate in a manner that prevents the reversal of air movement or shall be equipped with an alarm that would be actuated in the event that reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may be discharged to the outdoors after filtration or other means of effectively reducing an accidental aerosol burden, and dispersed clear of occupied buildings and air intakes.

§ 627.47 Toxins.

(a) General requirements for all facilities in which toxins are used are as follows. Such facilities will:

(1) Have a ventilation system that provides three to six air changes per hour, and that provides a directional airflow inward relative to the access halls.

(2) Have a sink for handwashing.

(3) Have an eyewash available.

(4) Have bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(5) Have furniture, furnishings, and surfaces that are sturdy and designed to be easily cleaned.

(6) Be arranged so that items are accessible for cleaning.

(7) Have a quick-drench shower available within the facility.

(8) A fume hood, biological safety cabinet, glove box, or equivalent engineering control equipped with HEPA filters and with charcoal filters if volatile materials are being used.

Subpart H—Engineering Controls

§ 627.48 Introduction.

As required by the Occupational Safety and Health Administration (OSHA) and recommended by the American Industrial Hygiene Association (AIHA) and the Centers for Disease Control (CDC), engineering controls and proper microbiological techniques are the primary means of protecting personnel who work with potentially hazardous biological materials. In situations of potentially higher hazard, these engineering controls are supplemented by personal protective clothing and equipment. Thus, the engineering controls discussed in this chapter will be the primary means of personnel and environmental protection when working with etiologic agents. Because of the importance of these engineering controls, this chapter contains not only requirements for the engineering and construction of these controls, but also requirements for the certification and continuous satisfactory performance of these controls. These will be described for each engineering control.

§ 627.49 Class I Biological Safety Cabinet.

(a) *Description.* The Class I biological safety cabinet (see Footnote [1]) is a ventilated cabinet for personnel protection only. The cabinet provides an uncirculated inward flow of air away from the operator. The exhaust is be passed through a HEPA filter. The exhaust may be discharged into the laboratory or vented out of the laboratory and dispersed away from occupied spaces or air intakes. When the exhaust is recirculated in a BL–2 or

[1] A line drawing of the Class I Biological Safety Cabinet is not included in this part but may be obtained from HQDA (DACS–SF), Mr. Wortley, room 2C717, Pentagon, Washington, DC 20310–0200 (703) 695–7291.

BL–3 facility, the cabinet must be tested and certified annually. In a BL–4 facilitiy, if the exhaust is recirculated, the cabinet must be tested and certified semi-annually.

(b) *Uses.* These cabinets are used in situations where personnel protection against the micro-organisms is required; for modest quantities of volatile, toxic, or radioactive chemicals (in concentrations and quantities associated with biological systems) if vented to the outside; and when sterility is not required. They are commonly used for housing tabletop centrifuges, in the necropsy of small animals, and for changing animal bedding.

(c) *Prohibitions.* This class of cabinet is not to be used when sterility must be maintained. In addition, volatile, toxic, or radioactive materials can not be used in this class of cabinet when the exhaust air is not exhausted to the exterior.

(d) *Certifications and requirements.* (1) The inward air velocity on these cabinets will be an average of 100+/− 20 linear feet per minute (lfpm). Each cabinet must be certified before use and semiannually thereafter by a face velocity test. Additionally, smoke tests will be performed annually to verify containment.

(2) The exhaust system will have a HEPA filter, which will be tested initially upon installation, after repair or replacement, and every two years thereafter (except when required more often). Filters will be certified to be 99.97 percent effective in capturing particulate matter by a leakage test using mineral oil or other appropriate aerosol dispersed as 0.3 micron droplets.

§ 627.50 Class II Biological Safety Cabinets.

All Class II biological safety cabinets (See Footnote [2]) are ventilated cabinets for personnel and product protection, having an open front with inward air flow for personnel protection.

(a) *General.* (1) All of these cabinets must conform and be certified to meet NSF Standard No. 49 revised, June 1987, for the applicable type of cabinet.

(2) After installation and before use, and annually thereafter, the cabinets will be tested in accordance with NSF Standard No. 49 (latest revision June 1987) as follows:

Primary (Required) Tests:

(i) Velocity Profile Test.

(ii) Work access opening airflow (Face Velocity) test.

(iii) HEPA filter leak test.

(iv) Cabinet integrity test (soap bubble test) for cabinets with positive pressure internal plenums.

Secondary (Optional) Tests:

(v) Vibration test.

(vi) Electrical leakage and ground circuit resistance tests.

(vii) Noise level test.

(viii) Lighting intensity test.

(ix) UV light intensity test.

(3) After repairs or alterations to the cabinetry or ventilation system that affect the cabinet, the tests listed in paragraph (a)(2) of this section will be performed for the relevant parameters.

(4) The work access opening airflow (face velocity) test, as specified in NSF Standard No. 49 (latest revision June 1987), will be performed to check that the cabinet is within specifications on an annual basis for Biosafety Levels 1 and 2 and toxin use. This test will be performed semi-annually on cabinets used for Biosafety Levels 3 and 4 as well as for work with dry forms of toxins.

(5) When the exhaust is recirculated in a BL–4 facility, the cabinet must be tested and certified semi-annually.

(b) *Class IIA Biological Safety Cabinets*—(1) *Description.* A Class IIA biological safety cabinet is one in which typically 70% of the air is recirculated within the cabinet and the exhaust passes through a HEPA filter before discharge. The exhaust may be exhausted into the room and positive-pressure contaminated ducts and plenums within the cabinet are allowed. Type A cabinets shall have a minimum calculated face velocity of 75 fpm.

(2) *Uses.* These cabinets are for working with low-to-moderate risk biological samples and for protection of the personnel against biological material while providing a sterile atmosphere in which to handle the material.

(3) *Prohibitions.* Materials that are toxic or volatile must not be used in these cabinets.

(c) *Class IIB_1 Biological Safety Cabinets*—(1) *Description.* A Class IIB_1 biological safety cabinet is one that maintains a minimum average inflow of air of 100+/− 20 lfpm and in which typically 30 percent of the air is recirculated. All recirculated and exhausted air passes through two HEPA filters in series. All contaminated internal ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* When ultra-sterility is needed, these are the cabinets of choice. The double filtration achieves a clearner atmosphere. Minute quantities of volatile, toxic, or volatile radioactive materials coincidental to use in biological systems may also be used in these cabinets.

(3) *Prohibitions.* More than minute quantities of toxic, volatile, or radioactive materials must not be used in these cabinets.

(4) *Additional Certifications or Requirements:* None.

(d) *Class IIB_2 Biological Safety Cabinets*—(1) *Description.* A Class IIB_2 biological safety cabinet is one that maintains a minimum average of 100+/− 20 lfpm inward flow and in which all air is exhausted directly from the cabinet through a HEPA filter without recirculation within the cabinet. All contaminated ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* These cabinets are recommended when small quantities of volatile, flammable, or toxic chemicals must be used coincidental with items requiring sterility.

(3) *Prohibitions.* While these cabinets do offer the greatest degree of safety for volatile, toxic, and flammable chemical handling in a sterile environment, they are not to be used in place of a fume hood for preparation of stock solutions of hazardous chemicals.

(e) *Class IIB_3 Biological Safety Cabinets*—(1) *Description.* A Class IIB_3 biological safety cabinet is one that meets all of the requirements of a Class IIB biological safety cabinet except that it recirculates most (typically 70 percent) of the air inside the cabinet. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* Minute amounts of non-flammable chemicals can be used coincidental with the use of low-to-moderate risk biological agents.

(3) *Prohibitions.* Flammable materials and more than minute amounts of toxic, radioactive, or volatile chemicals must not be used in these cabinets.

(4) *Additional Certifications or Requirements:* None.

§ 627.51 Class III Biological Safety Cabinets.

(a) *Description.* These cabinets (See Footnote [3]) are totally enclosed, ventilated cabinets of gas-tight construction. Operations are conducted through attached rubber gloves. The supply air is drawn into the cabinet through HEPA filters. The exhaust air is treated by double HEPA filtration, or by HEPA filtration followed by

[2] A line drawing of the Class II Biological Safety Cabinet is not included in this part but may be obtained from HQDA (DACS–SF), Mr. Wortley, room 2C717, Pentagon, Washington, DC 20310–0200 (703) 695–7291.

[3] A line drawing of the Class III Biological Safety Cabinet is not included in this part but may be obtained from HQDA(DACS–SF), Mr. Wortley, room 2C727, Pentagon, Washington, DC 20310–0200 (703) 695–7291.

incineration, and is not allowed to recirculate within the room.

(b) *Uses.* These cabinets provide the ultimate protection for personnel. These cabinets are suitable for low, moderate, and high risk etiologic agents.

(c) *Prohibitions.* More than minute amounts of flammables must not be used in these cabinets.

(d) *Certifications and Requirements.* (1) These cabinets will have a manometer or magnehelic gauge that indicates the negative pressure that is maintained inside the cabinet. The pressure inside the cabinet should be a minimum of 0.5 inches water gauge negative to the surrounding room.

(2) These cabinets will be pressure tested by the soap bubble/halogen leak test as prescribed in NSF Standard No. 49, Appendix B1 (latest revision June 1987), and certified, when the HEPA filter units are serviced.

§ 627.52 Fume hood.

Fume hoods in which etiologic agents are handled must use proven technologies to provide optimal containment. Fume hood placement, design, and capture testing requirements for use in the design of new laboratories can be found in the latest edition of Industrial Ventilation, A Manual of Recommended Practice, published by the American Conference of Governmental Industrial Hygienists.

(a) *Description.* Fume hoods are common chemical laboratory furnishings designed to capture fumes from chemicals that are used within them. Air is drawn through the opening and vented to the exterior without recirculation.

(b) *Uses.* Fume hoods provide excellent containment for handling hazardous chemicals.

(c) *Prohibitions.* Moderate risk biologicals and open containers of dry forms of toxins must not be used in a fume hood without HEPA filtration. Fume hoods should never be used when sterility is required.

(d) *Certifications and requirements.* (1) Inward air flow will be an average of 100 +/− 20 lfpm as measured at the face of the fume hood. Proper function of laboratory hoods is not only a function of face velocity. An evalution of the total operating environment is necessary.

(2) When filters are required, they will be certified by the mineral oil droplet (HEPA) or Freon (Charcoal) leak test as appropriate. Leakage through the filters will be less than 0.05 percent for Freon and 0.03% for oil droplets when initially installed.

(3) Fume hoods will be provided with indicator devices to give a warning should the ventilation system fail or if the hood face velocity falls below an average of 80 lfpm.

(4) Hood air flow will be certified when installed, when maintenance is performed on the ventilation system, and semiannually thereafter.

§ 627.53 Glove box.

(a) *Description.* A glove box is an enclosure that provides a positive barrier from liquids, solids, and chemical vapors. A glove box has viewing ports and glove ports for access. The box maintains personnel protection through solid barriers and maintenance of a negative pressure relative to its surroundings.

(b) *Uses.* Glove boxes are used when extreme containment is needed for highly toxic chemicals, especially for dry chemicals that can be swept out of containers by the airflow in hoods.

(c) *Prohibitions.* Unventilated boxes must not be used with volatile flammable materials and should not be used with volatile toxic materials unless dilution ventilation is provided.

(d) *Additional Certifications and Requirements.* (1) The glove box will be maintained at a pressure of at least 0.25 inches water gauge less than its surroundings.

(2) The pressure differential will be indicated by a manometer or magnehelic gauge. Indicator devices will display a loss of pressure below 0.25 inches water gauge.

(3) Gloves will be changed at appropriate intervals (dependent on the box contents) that will insure they provide the protection needed.

(4) Inlets that provide dilution air will be protected by HEPA filters.

§ 627.54 Ventilated balance enclosures.

(a) *Description.* A ventilated balance enclosure is a box that surrounds a balance and has a small open area for access and handling material in the front. Air is exhausted out the rear of the enclosure.

(b) *Uses.* A ventilated balance enclosure is used when containment of a balance is required for the weighing of hazardous materials that have a low vapor pressure (such as toxins). These enclosures are also used when it is desirable to utilize the balance in other than a fume hood (due to the turbulence and vibration) and when biological safety cabinets or glove boxes are inappropriate or unavailable. Dry forms of toxins may be weighed in these enclosures.

(c) *Prohibitions.* Very volatile or highly toxic volatile materials must not be handled in ventilated balance enclosures unless they are placed in closed containers in a properly functioning fume hood before being transferred to the balance enclosure.

(d) *Additional Certifications or Requirements.* (1) The flow through the openings in the enclosure will be at least 60 lfpm and must average between 60 and 80 lfpm.

(2) Containment will be certified prior to first use and annually thereafter by smoke tubes.

(3) The air flow will be certified initially and semi-annually by averaging readings taken from the face of the opening.

§ 627.55 Ventilated cage enclosures.

There are a number of cage-ventilated enclosures in which infected animals may be housed at levels corresponding to the various classes of bilogical safety cabinets. A brief description of four different types of animal ventilated cages is given below. This is not a complete description of all the different animal ventilated cages available. The proper functioning of these will be made initially, upon each connection to exhaust sources and at least annually. The inward flow rates on the partial containment systems and pressure checks on the total containment cages will be performed. Prior to selecting such equipment, an evaluation of the function and the equipment should be made, and the methods for testing and decontanation should be analyzed and documented.

(a) *Filter-top cages.* Small laboratory animal polystyrene or polycarbonate cage bottoms are fitted with a dome shaped glass fiber or polyester filter cage cover. The dome shaped filters help reduce the dissemination of aerosols, and the spread of infectious agents. Adequate ventilation around cages fitted with a dome shaped filter is essential since they may contain elevated ammonia and carbon dioxide levels, and high temperature and humidity. Ventilation recommendations in the NIH publication 86-23, 1985 Guide for the Care and Use of Laboratory Animals will be followed.

(b) *Forced ventilation cages.* This is a small HEPA-filtered animal cage connected to a centralized exhaust system. A minimum airflow of 0.03 m^3/min per cage is required. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

(c) *Cubicle-type isolation cage.* This is a partial containment unit which holds several animal cages. This unit is a negative pressure HEPA-filtered stainless steel cage. A minimum airflow of 0.3 m^3/min per cage is required for a

0.24 m^3 unit. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

(d) *Total containment cage.* This unit is a negative pressure or positive pressure HEPA-filtered stainless steel cage which has the filters incorporated into the design. It is halogen gas-leak tight and can be considered a Class III biological safety cabinet. A minimum airflow of 0.3 m^3/min per cage is required for a 0.24 m^3 unit. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

§ 627.56 Ventilated cage areas.

Ventilated cage areas are areas within a room that are solid-walled and bottomed areas for containing multiple cages housing infected animals. The containment for these areas is equivalent to the Class I biological safety cabinet. For testing purposes they will be treated the same as a Class I biological safety cabinet.

Appendix A to Part 627—References

Required Publications

Executive Order 12196
Safety and Health Programs for Federal Employees, 26 February 1980
9 CFR 102–104, 122
Animals and Animal Products
10 CFR Chapter 1
Nuclear Regulatory Commission
21 CFR 312, 600–680
Food and Drugs
29 CFR 1910
Occupational Health and Safety Administration Safety and Health Standards
39 CFR 111
Postal Service
40 CFR 1500–1508
Protection of Environment
42 CFR 71–72
Public Health Service Foreign Quarantine Regulations
49 CFR 172–173
The Department of Transportation.
AR 11–34
Army Respiratory Protection Program
AR 40–5
Medical Surveillance Program
AR 40–12
Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.
AR 40–14
Control and Recording Procedures for Exposure to Ionizing Radiation and Radioactive Materials
AR 40–66
Medical Record and Quality Assurance Administration
AR 70–65
Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities
AR 385–10
Army Safety Program
AR 385–40
Accident Reporting and Records
AR 385–BIO
Biological Defense Safety Program
AR 740–32
Responsibilities for Technical Escort of Dangerous Materials.
ASHRAE Standard 62
HHS Publication No. (NIH) 88–8395
Biosafety in Microbiological and Biomedical Laboratories
NIH Guidelines for Research involving Recombinant DNA Molecules
Federal Register 51: 7 May 1986
Postal Bulletin No. 21246
International Mail-Hazardous Materials
Dangerous Goods Regulations
International Air Transport Association (IATA), Publications Section, 2000 Peel Street, Montreal, Quebec, Canada H3A 2R4, Tel (514) 844–6311.
Guide for Adult Immunizations
Published by the American College of Physicians
Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates
The American Journal of Tropical Medicine and Hygiene, 29:1359–1381, 1980.
NSF Standard #49
National Sanitation Foundation Standard Number 49, Class II (Laminar Flow) Biohazard Cabinetry
Restricted Articles Tariff 6–D
Air Transport Association
Technical Instructions for the Safe Transport of Dangerous Goods by Air
International Civil Aviation Organization (ICAO) Intereg Group, 5724 Pulaski Road, Chicago, IL 60646, Tel. (312) 478–0900.

Additional References

ANSI Z86.1–1973
Breathing Air
Biohazards Reference Manual
American Industrial Hygiene Association, 1985
Bacterial Toxins: A Table of Lethal Amounts
Gill, D.M., Microbiological Reviews, Volume 46, Number 1; March 1982, pages 86–94.
Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639–3356
Compressed Gas Association Pamphlet G–7.1
Grade D Breathing Air
DHEW Pub. No. (NIH) 76–1165
Bological Safety Manual for Research Involving Oncogenic Viruses Guide for Transportation of Hazardous Materials, Vol. 4(1), February 10, 1975. Copies are obtained from the Office of Research Grants Inquiries, NIH, Department of Health, Education, and Welfare, 5333 Westbard Avenue, Bethesda, MD 20205.
Guidelines for Laboratory Design, Health and Safety Considerations
L. DiBerardinis, et. al., John Wiley and Sons, 1987
Guidelines for Prevention of Herpesvirus Simiae (B Virus) Infection in Monkey Handlers
Kaplan, J.E., et. al., Mortality and Morbidity Weekly Report, Volume 36, Number 41; October 23, 1987, pages 680–689.
Industrial Ventilation, A Manual of Recommended Practice, Published by the American Conference of Governmental Industrial Hygienists.
NIH publication 86–23
Guide for the Care and Use of Laboratory Animals, Packaging and Shipping of Biological Materials at ATCC
The American Type Culture Collection (ATCC), Copies are obtained from the ATCC, 12301 Parklawn Drive, Rockville, MD. 20852. Phone (301) 881–2600.
Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents
National Committee for Clinical Laboratory Standards (NCCLS), (H5–A2), Second edition, Vol. 5, No. 1. Copies are obtained from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.
The Centers for Disease Control, Office of Biosafety, 1600 Clifton Road N.E., Atlanta, Georgia 30333. Telephone (404) 639–3883, or FTS: 236–3883.

Appendix B to Part 627—Resource List for Immunoprophylaxis of Personnel at Risk

B–1.—RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK

Description of disease	Recommended product	Source for use in	Of product
Anthrax	Inactivated vaccine	Personnel working regularly with cultures, diagnostic materials, or infected animals.	USAMRIID.[1]
Botulism	Pentavalent toxoid (A,B,C,D,E) (IND).[2]	Personnel working regularly with cultures or toxin	CDC.[3]
Cholera	Inactivated vaccine	Personnel working regularly with large volumes or high concentrations of infectious materials.	Commercially available.
Diphtheria Tetanus (Adult)	Combined toxoid	All laboratory and animal care personnel irrespective of agents handled.	Commercially available.
Eastern equine encephalitis (EEE)	Inactivated vaccine (IND)[2]	Personnel who work directly and regularly with EEE in the laboratory.	USAMRIID.[1]

B-1.—RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK—Continued

Description of disease	Recommended product	Source for use in	Of product
Hepatitis A	Immune Serum Globulin [ISG (Human)].	Animal care personnel working directly with chimpanzees naturally or experimentally infected with Hepatitis A virus.	Commercially available.
Hepatitis B	Serum-derived or recombinant vaccine.	Personnel working regularly with human blood and blood components.	Commercially available.
Influenza	Inactivated vaccine	(Vaccines prepared from earlier isolate strains may be of little value in personnel working with recent isolates from humans or animals).	Commercially available.
Japanese Encephalitis	Inactivated vaccine (IND) [2]	Personnel who work directly and regularly with JE virus in the laboratory.	CDC.[3]
Measles	Live attenuated virus vaccine	Measles-susceptible personnel working with the agent or potentially infectious clinical materials.	Commercially available.
Meningococcal Meningitis	Purified polysaccharide vaccine	Personnel working regularly with large volumes or high concentrations of infectious materials (Does not protect against infection with group B meningococcus).	Commercially available.
Plague	Inactivated vaccine	Personnel working regularly with cultures or *Yersinia pestis*, or infected rodents or fleas.	Commercially available.
Poliomyelitis	Inactivated (IPV) and live attenuated (OPV) vaccines.	Polio-susceptible personnel working with the virus or entering laboratories or animal rooms where the virus is in use.	Commercially available.
Pox viruses (Vaccinia, Cowpox, or Monkey Pox virsuses).	Live (lyophilized vaccinia virus)	Personnel working with orthopox viruses transmissible to humans, with animals infected with these agents, and persons entering areas where these viruses are in use.	CDC.[3]
Q Fever (Phase II) vaccine	Inactivated (IND) [2]	Personnel who have no demonstrable sensitivity to Q fever antigen and who are at high risk of exposure to infectious materials or animals.	USAMRIID.[1]
Rabies	Human diploid line cell inactivated vaccine.	Personnel working with *all strains* of rabies virus, with infected animals, or persons entering areas where these activities are conducted.	Commercially available.
Rift Valley Fever	Inactivated virus vaccine (IND) [2]	All laboratory and animal care personnel working with the agent or infected animals and all personnel entering laboratories or animal rooms when the agent is in use.	USAMRIID.[1]
Rubella	Live attenuated virus vaccine	Rubella-susceptible personnel, especially women, working with "wild" strains or in areas where these viruses are in use.	Commercially available.
Tuberculosis	Live, attenuated (BCG) bacterial vaccine.	BCG vaccine ordinarily is not used in laboratory personnel in the U.S.	Commercially available.
Tularemia	Live attenuated bacterial vaccine (IND).[2]	Personnel working regularly with cultures or infected animals or persons entering areas where the agent or infected animals are in use.	USAMRIID.[1]
Typhoid	Inactivated vaccine	Personnel who have no demonstrated sensitivity to the vaccine and who work regularly with cultures.	Commercially available.
Venezuelan equine (VEE) encephalitis.	Live attenuated (TC83) viral vaccine (IND).[2]	Personnel working with VEE and the Equine Cabassou, Everglades, Mucambo and Tonate viruses, or who enter areas where these viruses are in use.	USAMRIID.[1]
Western equine encephalitis (WEE).	Inactivated vaccine (IND) [2] with WEE virus.	Personnel who work directly and regularly in the laboratory.	USAMRIID.[1]
Yellow Fever	Liver attenuated (17D) virus vaccine.	Personnel working with virulent and avirulent strains of Yellow Fever virus.	Commercially available.

[1] For information, contact: U.S. Army Medical Materiel Development Activity, Fort Detrick, Frederick, MD 21701, telephone: (301) 663-7661.
[2] Investigational New Drug.
[3] Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639-3356.
Source: Adapted from recommendations of the PHS Immunization Practices Advisory Committee and Biosafety in Microbiological and Biomedical Laboratories.

Appendix C to Part 627—Laboratory Safety Inspection

Check List

C-1. The check list that follows is not an exhaustive list of the items that should be considered when inspecting facilities where etiologic agents are used; however, it does provide some basic guidelines that can be useful in reminding safety and non-safety professionals of the things that need to be considered in laboratories that they are responsible for. The check lists are designed to be used as follows: All areas should be inspected using the general list in C-2. Certain items are optional, such as radiation safety; if no radioactive material is present in the room, then this would not be applicable. For BL-1 facilities the list in C-2 is adequate, while BL-2, BL-3, and BL-4 facilities must use the list in C-2 together with the appropriate list in C-3 to C-5.

C-2. Basic Checklist.

a. Housekeeping

(1) Is the room free of clutter?

(2) Are all aisles from the work areas to the available exits maintained clear of obstructions?

(3) Are all safety equipment items unobstructed and ready for use?

(4) Is the room clean?

b. Fire Safety

(1) Is the fire extinguisher hung in its proper place, ready for use and unobstructed?

(2) Is there an excess of flammables located outside NFPA approved cabinetry?

(3) Are all IA flammables that are in breakable containers in pint or smaller containers?

(4) Are all IB flammables that are in breakable containers in liter or smaller containers?

c. Chemical Safety

(1) Are the chemicals stored with compatible materials?

(2) Have the chemical fume hoods been certified in the last 6 months?

(3) Are the eyewash and deluge shower unobstructed and ready for use?
(4) Is the eyewash and deluge shower tested regularly to document proper operation?
(5) Is the organic waste container maintained in a closed position?
(6) Are all reagents and solutions properly labeled?
(7) Is a spill kit within a reasonable distance from the work areas?
(8) Is appropriate protective clothing available for the chemical hazards present?
(9) Is there a written hazard communication program?
(10) Have the personnel in the laboratory been trained in the provisions and principles of the hazard communication program?
(11) Are MSDS's located where they are available to the laboratory workers?
(12) Is there a written chemical hygiene plan?

(d) Radiation Safety

(1) Are the radioactive materials stored double-contained?
(2) Is the containment for the radiation waste container adequate to preclude spread of radiation?
(3) Are all containers appropriately labeled with radiation labels?
(4) Are all entrances to the room appropriately labeled?

(e) Electrical Safety

(1) Are excess extension cords being utilized?
(2) Are there any frayed cords in the room?
(3) Are there any cords on the floor across normal traffic patterns in the room?

(f) Ceneral Laboratory Safety

(1) Are sharps discarded and destroyed in a safe manner?
(2) Are work surfaces decontaminated daily and after a spill?
(3) Is the appropriate attire worn by everyone in the room?
(4) Is there evidence that personnel eat, drink, smoke, or store items for such in the room?
(5) Was mouth pipetting observed?
(6) Are all gas cylinders secured and all cylinders that are not in use capped?
(7) Are cylinders of oxidizers stored at least 20 feet from cylinders of flammable gases in the same room?
(8) Are the cylinders clearly labeled as to the contents?
(9) Are the cylinders transported on appropriate dollies or hand trucks?
(10) Is there a written respiratory protection program where respirators are used?

(g) Etiologic Agents

(1) Are all containers of etiologic agents appropriately labeled:
(i) Are freezers, refrigerators and similar storage units labeled with the biohazard warning sign?
(ii) Are the storage and shipping containers adequate and properly labeled?
(2) Have all personnel been adequately trained in general microbiological techniques?
(3) Are laboratory doors kept closed when experiments are in progress?
(4) Are all operations conducted over plastic-backed absorbent paper or spill trays?

C–3. Biosafety Level 2 supplemental checklist.

(a) Are all floor drains filled with water or suitable disinfectant?
(b) Is the Standing Operating Procedure for an etiologic agent spill signed by all personnel who work with etiolgic agents in the room?
(c) If biological safety cabinets are used, have they been certified within the last year?
(d) Are the appropriate decontaminants available?
(e) Are all entrances to the laboratory posted with:
(1) The appropriate special provisions for entry?
(2) The universal biohazard symbol?
(3) The name and phone number of the laboratory director or other responsible person?
(f) Is entry limited and restricted?
(g) Were gloves being worn when handling infected animals or infectious or toxic materials?
(h) Is eye and respiratory protection being worn in rooms where non-human primates are present?
(i) If materials are being transported off-site for decontamination, is the containment adequate?

C–4. Biosafety Level 3 supplemental checklist.

(a) Is laboratory clothing decontaminated before being sent to the laundry?
(b) Are all windows and penetrations through the walls and ceilings sealed?
(c) If biological safety cabinets are used, have they been certified within the last year?
(d) Are the appropriate decontaminants available?
(e) Are all entrances to the facility posted with:
(1) The appropriate special provisions for entry?
(2) The universal biohazard symbol?
(3) The name and phone number of the laboratory director or other responsible person?
(f) Is entry limited and restricted?
(g) Were gloves being worn when handling infected animals or infectious or toxic materials?
(h) Is eye and respiratory protection being worn in rooms where non-human primates are present?
(i) Do the monitors indicate that the room is under negative pressure relative to all entrances?
(j) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?
(k) Is the autoclave being properly maintained and certified?
(l) Is the foot, elbow, or automatic handwash sink operating properly?
(m) Are all operations with etiologic agents being conducted inside of biological safety cabinets or other approved engineering controls?
(n) Are all infected animals housed using appropriate primary containment systems?
(o) Do all personnel who enter rooms housing infected animals wear appropriate respiratory protection?
(p) Do personnel who exit rooms having infected animals leave their protective clothing in the animal and laboratory rooms?
(q) If available, has the UV pass box output been certified within the last 3 months?

C–5. Biosafety Level 4 supplemental inspection checklist.

(a) General.
(1) Are all penetrations through the walls and ceilings sealed?
(2) Are the appropriate decontaminants available and used properly?
(3) Are all entrances to the facility posted with:
(i) The appropriate special provisions for entry?
(ii) The universal biohazard symbol?
(iii) The name and phone number of the laboratory director or other responsible person?
(4) Is access to the laboratory controlled strictly and documented?
(5) Do the monitors indicate that the room is under negative pressure relative to all entrances?
(6) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?
(7) Is the autoclave being properly maintained and certified?
(8) Is the foot, elbow, or automatic handwash sink operating properly?
(9) Do the self-closing doors to the facility operate properly?
(10) Do personnel completely exchange street clothing for laboratory clothing before entry, and shower upon exiting?
(11) Is the dunk tank disinfectant fresh and appropriate for the agents in use?
(b) Suit Areas.
(1) Are all operations with etiologic agents conducted in Class I or II biological safety cabinets?
(2) Do the procedures in place ensure that, as much as possible, the contamination remains inside the cabinets (such as ensuring that everything removed from within the cabinets, such as gloves being worn, instruments, glassware, etc., are decontaminated or properly packaged first)?
(3) Were the Class I or II cabinets in the facility certified within 6 months?
(4) Does the suit decontamination shower have adequate appropriate decontaminant available?
(5) Has the suit decontamination shower been used or tested in the last month?
(6) Is the ventilated suit air supply and emergency air supply adequate and working properly?
(7) Is the emergency alarm system working properly?
(8) Are all of the one-piece positive pressure suits available for use in serviceable condition?
(9) Are infected animals housed in appropriate primary containment systems?
(10) Is the static pressure in the suit area negative to all surrounding areas?
(c) Non-Suit Areas.
(1) Are all operations with etiologic agents conducted inside of Class III biological safety cabinets?
(2) Were the Class III biological safety cabinets certified before initiating the current operation?

(3) Are all infected animals housed in Class III cabinet containment caging systems?

Appendix D to Part 627—Packaging and Labeling Requirements for Shipment of Etiologic Agents

D–1. Packaging and Labeling of Etiologic Agents, from HHS publication No. (NIH) 88–8395.

D–2. Guidelines for the Air Shipment of Diagnostic Specimens, from the Air Transport Association of America, Cargo Services Division, 1709 New York Ave. NW., Washington, DC 20006.

Appendix E to Part 627—Permits for Importation and Shipment of Etiologic Agents

E–1. Permit Application to Import or Transport Agents or Vectors of Human Disease. Department of Health, Education, and Welfare, PHS, CDC, Office of Biosafety, Atlanta, Georgia 30333.

E–2. Permit Application to Import Controlled Material; Import or Transport Organisms or Vectors. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Building, Hyattsville, Maryland 20782.

Appendix F to Part 627—Glossary

Part I—Abbreviations

AIHA
American Industrial Hygiene Association
AMC
Army Materiel Command
AR
Army Regulation
ATCC
American Type Culture Collection
ASHRAE
American Society of Heating, Refrigerating and Air Condition Engineers, Inc.
BDP
Biological Defense Program
BL
Biosafety Level
CDC
Centers for Disease Control
CFR
Code of Federal Regulations
DA PAM
Department of Army Pamphlet
DOT
Department of Transportation
DNA
Deoxyribonucleic Acid
EPA
Environmental Protection Agency
EtO
Ethylene Oxide
FDA
Food and Drug Administration
HEPA
High Efficiency Particulate Air
HHS
Health and Human Services
IATA
International Air Transport Association
IBC
Institutional Biosafety Committee
ICAO
International Civil Aviation Organization
lfpm
Linear Feet Per Minute
m
Meter
min
Minute
MSDS
Material Safety Data Sheets
MSHA
Mine Safety and Health Administration
NCCLS
National Committee for Clinical Laboratory Standards
NCI
National Cancer Institute
NEPA
National Environmental Policy Act
NIH
National Institutes of Health
NIOSH
National Institute for Occupational Safety and Health
NRC
Nuclear Regulatory Commission
NSF
National Sanitation Foundation
OSHA
Occupational Safety and Health Administration
pH
The negative logarithm of Hydrogen Ion Concentration
PHS
Public Health Service
PPE
Personnel Protective Equipment
RCRA-Listed
Resource Conservation Recovery Act of 1976 Listed Hazardous Waste
RDT&E
Research, Development, Test, and Evaluation
RPO
Radiation Protection Officer
SALS
Subcommittee on Arbovirus Laboratory Safety
SAR
Supplied-Air Respirator
SCBA
Self Contained Breathing Apparatus
SOP
Standard Operating Procedure
TLV
Threshold Limit Value
USDA
United States Department of Agriculture
UV
Ultraviolet

Section II—Terms

Approved respiratory protection

Tested and listed as satisfactory according to standards established by a competent authority (such as NIOSH, MSHA, or host country agency) to provide respiratory protection against the particular hazard for which it is designed. For military agent protection, DA and DOD are the approval authorities. (Approval authority may be specified by law.)

Biocontainment area

An area which meets the requirements for a Biosafety Level 3 or 4 facility. The area may be an entire building or a single room within a building. See Subpart G for details.

Biological Safety Cabinets

Engineering controls designed to enable laboratory workers to handle infectious etiologic agents and to provide primary containment of any resultant aerosol. There are three major classes of cabinets (I, II, and III) and several sub-classes of class II cabinets. Each type of cabinet provides a different degree of protection to personnel and to the products handled inside them. The various classes of cabinets are described in detail in Subpart H.

Biosafety Level 1

The facilities, equipment and procedure suitable for work involving agents of no known or of minimal potential hazard to laboratory personnel and the environment.

Biosafety Level 2

The facilities, equipment and procedures applicable to clinical, diagnostic or teaching laboratories, and suitable for work involving indigenous agents of moderate potential hazard to personnel and the environment. It differs from BL–1 in that (1) laboratory personnel have specific training in handling pathogenic agents, (2) the laboratory is directed by scientists with experience in the handling of specific agents, (3) access to the laboratory is limited when work is being conducted, and (4) certain procedures in which infectious aerosols could be created are conducted in biological safety cabinets or other physical containment equipment.

Biosafety Level 3

The facilities, equipment and procedures applicable to clinical, diagnostic, research, or production facilities in which work is performed with indigenous or exotic agents where there is potential for infection by aerosol and the disease may have serious or lethal consequences. It differs from BL–2 in that (1) more extensive training in handling pathogenic and potentially lethal agents, is necessary for laboratory personnel; (2) all procedures involving the manipulation of infectious material are conducted within biological safety cabinets, other physical containment devices, or by personnel wearing appropriate personnel protective clothing and devices; (3) the laboratory has special engineering and design features, including access zones, sealed penetrations, and directional airflow; and (4) any modification of BL–3 recommendations must be made only by the Commander.

Biosafety Level 4

The facilities, equipment and procedures required for work with dangerous and exotic agents which pose a high individual risk of life-threatening disease. It differs from Bl–3 in that (1) members of the laboratory staff have specific and thorough training in handling extremely hazardous infectious agents; (2) laboratory personnel understand the primary and secondary containment functions of the standard and special practices, containment equipment, and laboratory design characteristics; (3) access to the laboratory is strictly controlled by the Institute Director; (4) the facility is either in a separate building or in a controlled area within a building, which is completely isolated from all other

areas of the building; (5) a specific facility operations manual is prepared or adopted; (6) within work areas of the facility, all activities are confined to Class III biological safety cabinets or Class I or Class II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system; and (7) the maximum containment laboratory has special engineering and design features to prevent microorganisms from being disseminated to the environment.

Building

A structure that contains the requisite components necessary to support a facility that is designed according to the required Biosafety Level. The building can contain one or more facilities conforming to one or more Biosafety Level.

Confirmed Exposure

Any mishap with a BDP agent in which there was direct evidence of an actual exposure such as: a measurable rise in antibody titer to the agent, or a confirmed diagnosis of intoxication or disease.

Etiologic Agents

A viable microorganism, or its toxin which causes or may cause human disease, and includes those agents listed in 42 CFR 72.3 of the Department of Health and Human Services regulations, and any agent of biological origin that poses a degree of hazard similar to those agents.

Facility

An area within a building that provides the barriers appropriate to protect persons working in the facility and the environment external to the facility, and outside of the building.

High Efficiency Particulate Air (HEPA) Filter

A filter which removes particulate matter down to sub-micron sized particles from the air passed through it with a minimum efficiency of 99.97%. While the filters remove particulate matter with great efficiency, vapors and gases (e.g. from volatile chemicals) are passed through without restriction. HEPA filters are used as the primary means of removing infectious agents from air exhausted from engineering controls and facilities.

Human Lethal Dose

The estimated quantity of a toxin that is a minimum lethal dose for a 70 kilogram individual based upon published data or upon estimates extrapolated from animal toxicity data.

Commander or Institute Director

The commander or Institute Director of an Army activity conducting RDT&E with BDP etiologic agents, or the equivalent at a research organization under contract to the BDP.

Institution

An organization such as an Army RDT&E activity (Institute, Agency, Center, etc.,) or a contract organization such as a School of Medicine, or Research Institute that conducts RDT&E with BDP etiologic agents.

Laboratory

An individual room or rooms within a facility that provide space in which work with etiologic agents can be performed. It contains all of the appropriate engineering features and equipment required at a given Biosafety Level to protect personnel working in the lab and the environment external to the facility.

Large Scale Operations

Research or production involving viable etiologic agents in quantities greater than 10 liters of culture.

Maximum Containment Area

An area which meets the requirements for a Biosafety Level 4 facility. The area may be an entire building or a single room within the building. See chapter 7 for details.

Molded Masks

Formed masks that fit snugly around the mouth and nose and are designed to protect against non-toxic nuisance level dusts and powders. These do not require approval by NIOSH/MSHA. Masks made of gauze do not qualify.

Potential Accidental Exposure

Any accident in which there was reason to believe that anyone working with a BDRP agent may have been exposed to that agent, yet no measurable rise in antibody titer or diagnosis of intoxication or disease was made. However, the high probability existed for introduction of an agent through mucous membranes, respiratory tract, broken skin or circulatory system as a direct result of the accident, injury or incident.

Resource Conservation Recovery Act of 1976 Listed Hazardous Waste

The waste materials listed by EPA under authority of the RCRA for which the disposal is regulated by the Environmental Protection Agency. A description and listing of these wastes is located in 40 CFR part 261.

Suite

An area consisting of more than one room, and designed to be a functional unit in which entire operations can be facilitated. Suites may contain a combination of laboratories and/or animal holding rooms and associated support areas within a facility that are designed to conform to a particular Biosafety Level. There may be one or more suites within a facility.

Toxin

Toxic material of etiologic origin that has been isolated from the parent organism [4].

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-4988 Filed 3-5-91; 8:45 am]

BILLING CODE 3710-08-M

[4] The publication "Bacterial Toxins: a Table of Lethal Amounts," (Gill, D.M. (1982) Microbiological Reviews, 46:86-94) contains a useful table of mammalian toxicities of numerous toxins.

federal register

Wednesday
March 6, 1991

Part IV

Federal Emergency Management Agency

44 CFR Part 353

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness; Final rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 353

RIN 3067-AB49

Fee for Services in Support, Review and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule

SUMMARY: This rule adopts in final form part 353 of title 44 CFR, Emergency Management and Assistance, chapter 1, Federal Emergency Management Agency (FEMA), subchapter E, Preparedness. This Part establishes a fee charged to nuclear power plant licensees for services that FEMA contributes to site-specific radiological emergency preparedness activities for commercial nuclear power plants. FEMA's services contribute to the fulfillment of emergency preparedness requirements needed for the Nuclear Regulatory Commission's (NRC) licensing purposes under the Atomic Energy Act of 1954, as amended. This rule implements Title V of the Independent Offices Appropriations Act (IOAA) of 1952, 31 U.S.C. 9701, which authorizes the Federal Emergency Management Agency to recover to the fullest extent possible costs attributable to services to identifiable recipients.

EFFECTIVE DATE: This rule is effective April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Vernon Wingert, Chief, Program Development Branch, Technological Hazards Division, FEMA, Washington, DC 20472; 202-646-2872.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 1989, FEMA published in the **Federal Register** (54 FR 27390-27396) a proposed rule to establish a fee system for the services provided by the agency to recipient licensees for services to support site-specific offsite radiological emergency preparedness for commercial nuclear power plants. The fees are based on site-specific costs incurred under FEMA's Radiological Emergency Preparedness (REP) Program in support of the Nuclear Regulatory Commission's (NRC) licensing process under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, *et seq.* These services are provided in support of a Memorandum of Understanding between NRC and FEMA (50 FR 15485, April 18, 1985) and regulations issued by both FEMA (44 CFR parts 350, 351 and 352) and NRC (10 CFR part 50). Emergency response plans and exercises are evaluated under joint FEMA-NRC criteria, NUREG-0654/FEMA-REP-1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee can submit a utility plan to the NRC (see 10 CFR part 50). FEMA, if requested by the NRC through the MOU, can make an assessment, finding and determination on such utility developed plans and exercises, that will be evaluated under the joint FEMA-NRC criteria.

After careful consideration, FEMA has prepared a final rule somewhat more narrow in scope than the proposed rule. The fees in this rulemaking are applicable only to services directly related to the obtaining and maintaining of an operating license. The primary differences between the proposed and final rule are the narrowing of activities eligible for reimbursement to the United States Treasury, including deletion of user fee charges for activities performed by FEMA in connection with continued review of State plans under 44 CFR part 350 once an operating license has been granted or the application has been denied or withdrawn. Licensees continue to be identified as recipients and payors of fees assessed for FEMA services due to the benefit of regulatory compliance with NRC requirements. The fee is based on Title V of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. 9701, which authorizes Federal agencies to recover to the fullest extent possible costs attributable to services to identifiable recipients.

Fee Development

A. Radiological Emergency Plans and Preparedness

Under the Radiological Emergency Preparedness (REP) Program, FEMA is responsible for processing applications for the review and approval of offsite radiological emergency plans and preparedness requested directly by a State under 44 CFR part 350 or by the NRC under the MOU (50 FR 15485, April 18, 1985) on behalf of the licensee. The REP Program also has responsibility for processing a licensee's certification when a request is made under Executive Order (E.O.) 12657 for Federal assistance and for providing such assistance, if warranted under 44 CFR part 352.

In identifying the site-specific services FEMA renders to licensees, it was determined that only those elements of the agency that provide such services benefitting licensees would be considered in the calculation of fees. These units are the Office of Natural and Technological Hazards/State and Local Programs and Support Directorate, the FEMA Regional Offices/Natural and Technological Hazards Divisions and the Office of General Counsel.

An estimate of the program's professional staff time is necessary to calculate the fee for site-specific offsite radiological emergency plans and preparedness services provided by FEMA. The costs of personnel who provide these services are included in the calculation of an average cost per work-year rate to maintain a professional employee who provides side-specific services that are billable for radiological emergency planning and preparedness activities. This rate has been developed by using: (1) The program's cost of personnel compensation (salaries) for professional REP and legal staff, (2) personnel benefits for the professional REP and legal staff, (3) administrative support (e.g., clerical salaries and benefits and printing), (4) travel and (5) overhead support (e.g., rent and utilities). This rate will be applied for site-specific services provided for licensees on a professional staff hourly rate basis of $39.00 per hour for FY 91, by FEMA staff. This rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the **Federal Register** for each fiscal year if the rate increases or decreases.

The professional staff hourly rate will be charged when any FEMA professional staff member works on a site-specific project that contributes to a licensee's compliance with the NRC's regulatory requirements. No charge will be made for work not related to a site-specific project.

Additional costs incurred by FEMA in the use of contractual services will be charged to the licensee by FEMA, at the rate and cost incurred.

Discussion of Comments on Proposed Rule

FEMA requested that comments on the proposed rule be submitted by August 28, 1989, followed by an extension to September 11, 1989. Thirty-one (31) written communications were received and placed in the Docket. These comments were received from eight (8) States, seventeen (17) utilities, two (2) utility associations, one (1) regulatory utility commissioners association, the Tennessee Valley Authority (TVA), one (1) city bar association and two (2) attorneys

representing twenty-five (25) utilities and two (2) citizens.

A number of the comments were general in nature addressing FEMA's basic authority for promulgation of the regulation and the role of FEMA in the planning process. A general comment was directed to the question of the identification of the licensee as the ultimate beneficiary of FEMA's services and thus, responsible for the payment of fees. There were also a number of comments directed to specific sections of the regulation. These specific comments will be related to the applicable section discussed and the agency's response noted with supporting comments.

A. General Comments

The Role and Authority of FEMA in the Regulatory Process

Several commenters expressed the concern that FEMA's role is not that of a regulatory agency and, therefore, is not authorized to recover costs under Title V of the IOAA. However, FEMA's role as the lead agency for review and assessment of the adequacy of offsite emergency plans developed by State and local governments or licensees and their capability to implement such plans is an inherent and necessary part of the regulatory process (FEMA/NRC MOU). Pursuant to 10 CFR 50.47(a) (1) and (2), the NRC will not issue an operating license for a nuclear power plant unless a finding by FEMA is made that there exists reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. Therefore, FEMA's services convey the benefit of regulatory compliance for the licensee. Further, the IOAA does not explicitly state that only regulatory agencies may assess user fees pursuant to its authorities. It is used by many agencies, including FEMA, to charge for a number of services provided.

The authority for FEMA to assess user fees based on the IOAA was further questioned based on the assertion that FEMA's offsite preparedness activities provide benefits to the general public, as well as State and local governments, rather than to licensees. It is FEMA's intent to assess user fees only for site-specific activities which provide a direct benefit to the licensee. While there will be an offsite benefit to State and local governments in the increased level of preparedness, the ultimate benefit remains with the utility in complying with NRC licensing requirements. Indeed, the REP program and its attendant requirements and regulations would not exist were it not for the existence of commercial nuclear power plants and special safeguards necessary for protection of public health and safety. The aspect of separation of services where there is some public benefit is addressed in *Mississippi Power and Light* v. *United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979). The Court held that the NRC "is not required to segregate public and private benefits and that it may recover the full cost of providing a service to a private beneficiary, regardless of whether that service may also benefit the public."

Several commenters contended that FEMA cannot assess user fees where the licensees do not make requests directly to FEMA for its services based on the interpretations of the IOAA stating that user fee assessments must be incident to a voluntary act, i.e., at the request of the recipient. However, when utilities seek to obtain or maintain a license with the NRC, such requests are implicitly made of FEMA due to the necessity of FEMA assessments, findings and determinations in the NRC licensing process.

Some commenters asserted that in providing services incident to the FEMA/NRC MOU that FEMA's activities primarily benefit the NRC rather than the licensee. While FEMA is an integral part of the NRC's licensing process, that relationship does not change the fact that the ultimate beneficiaries of FEMA's activities are the utilities seeking to obtain and maintain an operating license. Further, concerns that user fees collected by FEMA in conjunction with NRC licensing activities will exceed the 45% limitation imposed by 42 U.S.C. 2213(b)(1)(a) are not applicable as the cited statute only limits user fee collections by the NRC.

There appears to be a general concern that FEMA's position as a fair and unbiased participant in the planning process may be jeopardized by the collection of fees and that FEMA would be compelled to concur in offsite planning activities to keep nuclear generating facilities in operation and, in turn, assess more user fees in the future. The precedent for collection of fees from licensees for services provided in support of commercial nuclear power plant licensing and other regulatory services is established in NRC regulation, 10 CFR part 170. Both in the circumstances set forth under 10 CFR part 170 and in this rule, fees collected are, in fact, remanded to the U.S. Treasury and are not available to the agency. FEMA will continue to receive appropriated funds for radiological emergency preparedness activities. Concerns were expressed that the agency will attempt to generate revenues by charging excessively for services. As FEMA will not benefit directly from the collection of fees, no incentive is present to bill for other than reasonable services provided.

Relationship to Executive Order 12657

On November 18, 1988, the President issued Executive Order 12657 (3 CFR 1988 comp. p. 611) "Federal Emergency Management Agency Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants." This Order was issued to ensure that adequate offsite radiological emergency planning and preparedness exist at commercial nuclear power plants for "decline and fail" situations, in order to satisfy the emergency planning requirements of the NRC for the issuance or retention of operating licenses.

Several comments were made with respect to the relation of this proposal to E.O. 12657. E.O. 12657 applies only to situations where a State or local government declines or fails to prepare adequate offsite radiological emergency plans or fails to participate adequately in demonstrating, testing, exercising or the using of such plans. The suggestion was made that this rulemaking should have been applied solely to the limited purpose of E.O. 12657.

While the procedures and costs established under this rule will also apply in the circumstances presented under Executive Order 12657, the establishment of fees for services within this rule has a much broader purpose. It is intended to apply to those situations where FEMA provides services that are of benefit to commercial nuclear power plant licensees in order to fulfill the broader Presidential initiative of recovering the cost of services provided by a Federal agency, as authorized under the IOAA.

Response to Section-Specific Comments

Section 353.4

Comment: A number of commenters expressed a concern that adequate accounting measures be developed to assure that procedures for the determination of costs incurred by FEMA and attributable to specific licensees provide a sufficient degree of accountability to ensure the reasonableness of fees to be assessed. Specifically, the provision of a fee ceiling or annual cap was suggested.

Discussion: FEMA's position in not establishing a ceiling on fees is

consistent with the NRC revision of fee schedules (10 CFR part 170) where the NRC fee ceiling was removed based on the concept that fees should be consistent with expenditures. Time-keeping procedures developed by the agency will track all site-specific FEMA services.

Response: No change.

Comment: FEMA site-specific cost estimates were requested to allow licensees to adequately project budget needs.

Discussion: It is estimated that the total cost recovery to the U.S. Treasury will be approximately $4 million to $6 million during the next year. The estimated fee that each licensee can expect to be charged will be based on the work performed at a specific site and will vary due to the complexity of the work accomplished.

Response: No change.

Comment: Several commenters were concerned that the proposed rule did not specify provisions for resolving disputed assessments where a licensee might question FEMA expenses.

Discussion: Disputed bills for services will be processed in accordance with FEMA Regulation, 44 CFR part 11, subpart C and procedures regarding debt collection in FEMA Manual 2610.1 (November, 1988). See § 353.7.

Response: No change.

Section 353.5

Comment: Several commenters suggested that the computation of hourly professional charges by combining the FEMA staff cost and contractual staff cost results in a duplicative charge.

Discussion: It is agreed that a more equitable system results from the computation of the hourly rate based on costs directly attributable to FEMA personnel. Contractual support will be charged separately at the rate and cost incurred.

Response: The fee schedule has been revised to implement a more equitable system of site-specific charges for FEMA and FEMA contract support services. See § 353.6.

Section 353.6

Comment: One State questioned whether the fee assessment would apply to exercises conducted for continued FEMA approval as defined in 44 CFR 350.9(c) (1) through (4).

Discussion: It is the intent of the agency for fees to apply to services required on a site-specific basis to assure that appropriate protective measures can be implemented in the event of a radiological emergency. This would include, but not be limited to the preparation, conduct and evaluation of all exercises and drills (including medical drills and remedial exercises) and review of plan revisions required by exercise-identified inadequacies.

Response: This has been clarified in the rule. See § 353.6(a).

Comment: Several commenters representing utilities expressed the concern that licensees are not the identifiable beneficiaries for certain categories of services contained in the rule because these services are not directly required for a utility's NRC license. Specifically, the recovery of fees for "formal review and approval" of State and local offsite plans developed pursuant to 44 CFR part 350 was questioned based on the position that formal part 350 approval is not required for issuance and maintenance of a nuclear power plant license.

Discussion: FEMA has accepted the view that, once an operating license has been granted or the application denied or withdrawn, continued review of State plans under 44 CFR part 350 will generally not have a direct impact on the license except insofar as it is necessary to support biennial exercises under 10 CFR part 50, appendix F. Because FEMA recognizes that there is some difficulty in distinguishing plan review activities which support such exercises from those that do not, FEMA has decided not to charge user fees for continued review of State plans under 44 CFR part 350 once an operating license has been granted or the application denied or withdrawn, except as noted in the next paragraph.

However, FEMA believes that activities that are directly related to biennial exercises of State and local plans are of benefit to the licensee because of the direct relationship between results of exercise activities and the maintenance of the license. Therefore, FEMA has decided to charge user fees for activities that are directly related to biennial exercises of State and local plans, or any other drill or exercise upon which maintenance of a license may be predicated, including but not limited to the following: Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, and post-exercise meetings and reports; review and approval of plan revisions that are exercise inadequacy-related; remedial exercise and medical drill preparation, review, conduct, participation, evaluation, meetings and reports and technical assistance that are exercise inadequacy-related.

Response: The rule has been revised to delete charges for formal reviews under 44 CFR part 350 once an operating license has been granted or the application denied or withdrawn, except as is necessary to support exercise related activities. See § 353.6.

Comment: Several commenters questioned whether it is appropriate for FEMA to charge the licensee for participation in site-specific adjudicatory proceedings, particularly where contested hearings are involved.

Discussion: FEMA recognizes that the NRC has adopted a policy of not charging user fees for contested hearings. However, FEMA views that policy as being within the NRC's discretion and not mandated by law. FEMA's participation in contested hearings related to site-specific concerns has a direct impact on receipt or retention of an operating license. FEMA, therefore, adopts a policy of imposing user fees for such participation.

Response: No change.

Comment: One commenter questioned the equity of charging a licensee for the FEMA investigation of third party allegations, particularly where the allegations are unfounded.

Discussion: The circumstances under which FEMA would be called upon to investigate a third party allegation are quite limited. FEMA does not intend to charge a user fee for such activities.

Response: The rule has been revised to make this clear. See § 353.6.

Comment: Several commenters questioned whether technical assistance to State and local governments should be an eligible cost if it is not a requirement for NRC licensing.

Discussion: There are some circumstances where technical assistance directly impacts the issuance and maintenance of a license and others where it does not. FEMA intends to impose user fees for technical assistance only where: (a) It is requested by a utility, or (b) it is requested by a State or local government in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license may be predicated.

Response: The rule has been changed to specify those circumstances under which technical assistance would be billed to the licensee. See § 353.6.

Comment: Two commenters noted that while the proposed rule specifically states that FEMA will not charge for services by another Federal agency to benefit a licensee, § 353.6(a) indicates that plan review by the Regional Assistance Committee is an eligible cost item.

Discussion: Fees for services in this rulemaking will apply only to FEMA personnel and FEMA contractors.

Response: Section 353.6(a) has been revised to remove language reflecting charges for other Federal agencies.

Comment: Charging fees for FEMA's response to an actual radiological emergency was questioned, because such a response was viewed as performing a fundamental government service not specific to the licensee, and, therefore, not properly the subject of the assessment of fees under the IOAA.

Discussion: FEMA, in response to the comments received, has determined not to include in its regulation user fees for FEMA's response to an actual radiological emergency. However, should such an event take place, FEMA will evaluate it on a case-by-case basis and reserves the option to consider and utilize whatever legal remedies may be available to secure compensation for its costs incurred in responding to a radiological emergency.

Response: Charges for this service have been deleted from § 353.6.

Regulatory Flexibility Certification

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

Environmental Assessment and Finding of No Significant Environmental Impact

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, "Environmental Considerations," that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. In support of this finding, an environmental assessment has been prepared which is available for inspection and copying for a fee in the Rules Docket. The changes made in the final rule do not require any modification to the prior "Environmental Assessment and Finding of No Significant Environmental Impact."

Regulatory Analysis

This rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions, and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no Regulatory Analysis is required.

Paper Work Reduction Act

This rule does not contain collection of information requirements and is not subject, therefore, to the Paper Work Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*).

Federalism Executive Order

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee at the Rules Docket.

List of Subjects in 44 CFR Part 353

Nuclear power plants and reactors, Radiation protection, Intergovernmental relations and Federal assistance.

Accordingly, subchapter E chapter 1, title 44 Code of Federal Regulations is amended by adding part 353.

PART 353—FEE FOR SERVICES IN SUPPORT, REVIEW AND APPROVAL OF STATE AND LOCAL GOVERNMENT OR LICENSEE RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.

Authority: 31 U.S.C. 9701; E.O. 12657 and E.O. 12148.

§ 353.1 Purpose.

This part sets out fees charged for site-specific radiological emergency planning and preparedness services rendered by the Federal Emergency Management Agency, as authorized by 31 U.S.C. 9701.

§ 353.2 Scope.

The regulation in this part applies to all licensees who have applied for or have received a license from the Nuclear Regulatory Commission to operate a commercial nuclear power plant.

§ 353.3 Definitions.

As used in this part, the following terms and concepts are defined:

(a) *FEMA* means the Federal Emergency Management Agency.

(b) *NRC* means the Nuclear Regulatory Commission.

(c) *Certification* means the written justification by a licensee of the need for Federal compensatory assistance, as authorized in 44 CFR part 352 and E.O. 12657.

(d) *Technical assistance* means services provided by FEMA to facilitate offsite radiological emergency planning and preparedness such as provision of support for the preparation of offsite radiological emergency response plans and procedures; provision of advice and recommendations for specific aspects of preparedness such as alert and notification and emergency public information.

(e) *Licensee* means the utility which has applied for or has received a license from the NRC to operate a commercial nuclear power plant.

(f) *Governor* means the Governor of a State or his/her designee.

(g) *RAC* means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce and other Federal Departments and agencies as appropriate.

(h) *REP* means FEMA's Radiological Emergency Preparedness Program.

(i) *Fiscal Year* means Federal fiscal year commencing on the first day of October through the thirtieth day of September.

(j) *Federal Radiological Preparedness Coordinating Committee* is the national level committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal Departments and agencies as appropriate.

§ 353.4 Payment of fees.

Fees for site-specific offsite radiological emergency plans and preparedness services and related site-specific legal services are payable upon notification by FEMA. FEMA services will be billed at 6-month intervals for all accumulated costs on a site-specific basis. Each bill will identify the costs related to services for each nuclear power plant site.

§ 353.5 Average cost per FEMA professional staff-hour.

Fees for FEMA services rendered will be calculated based upon the costs for such services using a professional staff rate per hour equivalent to the sum of the average cost to the agency of maintaining a professional staff member performing site-specific services related to the Radiological Emergency Preparedness Program, including salary, benefits, administrative support, travel and overhead. This rate will be charged when FEMA performs such services as: Development of exercise objectives and scenarios, pre-exercise logistics, exercise conduct and participation, evaluation, meetings and reports; review and approval of Plan revisions that are utility-requested or exercise inadequacy related; remedial exercise, medical drill or any other exercise or drill upon which a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports; the issuance of interim findings pursuant to the FEMA/NRC Memorandum of Understanding (MOU) (App. A of this part); review of utility plan submissions through the NRC under the MOU; utility certification submission review under 44 CFR part 352 and follow-on activities; site-specific adjudicatory proceedings and any other site-specific legal costs and technical assistance that is utility requested or exercise inadequacy related. The professional staff rate for FY 91 is $39.00 per hour. The referenced FEMA/NRC MOU is provided in this rule as appendix A. The professional staff rate for the REP Program and related legal services will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the **Federal Register** for each fiscal year if the rate increases or decreases.

§ 353.6 Schedule of services.

Recipients shall be charged the full cost of site-specific services based upon the appropriate professional hourly staff rate for the FEMA services described in this Section and for related contractual services which will be charged to the licensee by FEMA, at the rate and cost incurred.

(a) When a State seeks formal review and approval by FEMA of the State's radiological emergency response plan pursuant to 44 CFR part 350 (Review and Approval Process of State and Local Radiological Emergency Plans and Preparedness), FEMA shall provide the services as described in 44 CFR part 350 in regard to that request and fees will be charged for such services to the licensee, which is the ultimate beneficiary of FEMA services. This provision does not apply where an operating license has been granted or the application denied or withdrawn, except as necessary to support biennial exercises and related activities. Fees will be charged for all FEMA, but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation, meetings and reports.

(2) Review of plan revisions that are exercise-inadequacy related;

(3) Technical assistance that is exercise-inadequacy related;

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(b) Interim findings. Where the NRC seeks from FEMA under the FEMA/NRC MOU an interim finding of the status of radiological emergency planning and preparedness at a particular time for a nuclear power plant, FEMA shall assess a fee to the licensee for providing this service. The provision of this service consists of making a determination whether the plans are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency and that such plans are capable of being implemented.

(c) NRC utility plan submissions. Fees will be charged for all FEMA but not other Federal agency activities related to such services, including but not limited to the following:

(1) Development of exercise objectives and scenarios, preexercise logistics, exercise conduct and participation, evaluation and post-exercise meetings and reports.

(2) Notice and conduct of public meeting.

(3) Regional finding and determination of adequacy of plans and preparedness followed by review by FEMA Headquarters resulting in final FEMA determination of adequacy of plans and preparedness,

(4) Remedial exercise, medical drill, or any other exercise or drill upon which maintenance of a license is predicated, with regard to preparation, review, conduct, participation, evaluation, meetings and reports.

(d) Utility certification submission review. When a licensee seeks Federal assistance within the framework of 44 CFR part 352 due to the decline or failure of a State or local government to adequately prepare an emergency plan, FEMA shall process the licensee's certification and make the determination whether a decline or fail situation exists. Fees will be charged for services rendered in making the determination. Upon the determination that a decline or fail situation does exist, any services provided or secured by FEMA consisting of assistance to the licensee, as described in 44 CFR part 352, will have a fee charged for such services.

(e) FEMA participation in site-specific NRC adjudicatory proceedings and any other site-specific legal costs. Where FEMA participates in NRC licensing proceedings and any related court actions to support FEMA findings as a result of its review and approval of offsite emergency plans and preparedness, or provides legal support for any other site specific FEMA activities comprised in this rule, fees will be charged to the licensee for such participation.

(f) Rendering technical assistance. Where FEMA is requested by a licensee to provide any technical assistance, or where a State or local government requests technical assistance in order to correct an inadequacy identified as a result of a biennial exercise or any other drill or exercise upon which maintenance of a license is predicated, FEMA will charge such assistance to the licensee for the provision of such service.

§ 353.7 Failure to pay.

In any case where there is a dispute over the FEMA bill or where FEMA finds that a licensee has failed to pay a prescribed fee required under this part, procedures will be implemented in accordance with 44 CFR part 11 subpart C to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

Appendix A to Part 353—Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating to Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45

FR 82713). The substantive changes in the new MOU deal principally with the FEMA handling of NRC requests for findings and determinations concerning offsite planning and preparedness. The basis and conditions for interim findings in support of licensing are defined, as well as provisions for status reports when plans are not complete. The text of the MOU is set out below except that an attachment is not included. This attachment concerns membership on a steering committee.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters, so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated memorandum of understanding became effective November 1, 1980. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the January and November 1980 MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles, agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergency response plans [1] and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal agencies for responding to accidents involving peacetime nuclear emergencies.

II. Authorities and Responsibilities

FEMA—Executive Order 12148 charges the Director, FEMA, with the responsibility to "* * * establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2-101) and "* * * represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs." (Section 2-104.)

On December 7, 1979, the President in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources staffing levels and qualifications, and equipment adequacy). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG-0654/FEMA-REP-1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment adequacy); or (3) plans are adequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

[1] Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR part 350), and as noted in 44 CFR 350.3(f) may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

If in FEMA's view the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1, and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that may adversely affect public health and safety that must be corrected in order to provide reasonable assurance that the plans can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State and local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982 (47 FR 10758).]

NRC—The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews. FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearings boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the Executive Legal Director of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this document shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of Offsite Plans and Preparedness. NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and Evaluation of Joint Exercises. FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness

capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under 44 CFR Part 350. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that may adversely impact public health and safety that must be corrected by the affected State and local governments in order to provide reasonable assurance that the plan can be implemented; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. Within 30 days of the exercise, a draft exercise report will be sent to the State, with a copy to the Regional Assistance Committee, requesting comments and a schedule of corrective actions, as appropriate, from the State in 30 days. When there are deficiencies of the types noted in 2 above, and when there is a potential for a remedial exercise, FEMA Headquarters will promptly discuss these with NRC Headquarters. Within 90 days of the exercise, the FEMA report will be forwarded to the NRC Headquarters. Within 15 days of receipt of the FEMA report, NRC will notify FEMA in writing of action taken with the licensee relative to FEMA initiatives with State and local governments to correct deficiencies identified in the exercise.

D. Emergency Planning and Preparedness Guidance. NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

E. Support for Document Management System. FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

At NRC this includes Document Management System support to the extent that it does not affect duplication or records retention. At FEMA, this includes technical support to the Radiological Emergency Preparedness Management Information System. This agreement is not intended to include the automated information retrieval support for the national level emergency response facilities.

F. Ongoing NRC Research and Development Programs. Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

G. Public Information, and Education Programs. FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for coordination of emergency planning, preparedness, and response activities between the two agencies. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria as appropriate in their respective jurisdictions.

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: April 3, 1985.

William J. Dircks,

Executive Director for Operations.

Approved for the Federal Emergency Management Agency.

Dated: April 3, 1985.

Samuel W. Speck.

Associate Director, State and Local Programs and Support.

Dated: January 25, 1991.

Wallace E. Stickney,

Director of FEMA.

[FR Doc. 91-5137 Filed 3-5-91; 8:45 am]

BILLING CODE 6718-20-M

federal register

Wednesday
March 6, 19

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1991-1992 Hunting Regulations (Preliminary)

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed 1991-92 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The taking of migratory birds is prohibited unless specifically provided for by regulation. These regulations will permit the taking of the designated species during the 1991–92 season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. These seasons provide recreational hunting opportunities to the public and aid Federal and State governments in the management of migratory game birds, and are designed to maintain harvests at levels compatible with migratory bird population and habitat conditions.

DATES: The comment period for proposed early-season regulations frameworks will end on July 22, 1991; and for late-season proposals on August 26, 1991. The public hearing for early-season regulations will be held on June 20, 1991, at 9 am. The public hearing for late-season regulations will be held on August 2, 1991, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to testify at either hearing may be mailed to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Notice of Intention To Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1991–92 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1991–92 hunting season, regulations will be proposed for certain designated members of the avian families: Anatidae (ducks, geese, brant, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and moorhens and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1991–92 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1991–92

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed season frameworks are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: The need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most waterfowl before late July.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1991–92 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

The proposed or final regulations section of this and subsequent documents outline hunting frameworks and guidelines that are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's Geese
8. Tundra Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico and Virgin Islands
21. Falconry
22. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention will be omitted and the remaining item numbers will be discontinuous and appear incomplete.

Hearings

Two public hearings pertaining to 1991–92 migratory game bird hunting regulations are scheduled. Both hearings will be conducted in accordance with 455 DM 1 of the Departmental Manual.

On June 22, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of migratory shore and upland game birds. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 2, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 22 public hearing. The public is invited to participate in both hearings.

Persons wishing to make a statement at these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Copies of statements should be filed with the Director before or during each hearing.

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments. Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES.**

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. The Service will consider, but possibly may not respond in detail to each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various flyway councils:

DATE: March 24, 1991.

—Atlantic Flyway Council, 9:00 a.m.
—Mississippi Flyway Council, 8:30 a.m.
—Central Flyway Council, 8:30 am.
—Pacific Flyway Council, 9:00 am.
—National Flyway Council, 3:00 pm.

The Council meetings will be held at the Edmonton Convention Centre in Edmonton, Alberta, Canada.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

Prior to issuance of the 1991–92 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

A Determination of Effects approved by the Director, on February 5, 1991, concluded that the hunting frameworks being proposed for 1991–92 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1990. This analysis was updated for 1991. The 1991 FRIA update included waterfowl hunter and harvest information from the 1989–90 season. The summary of the 1991 update follows:

New information which can be compared to that appearing in the 1990 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1989 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1989–90 hunting season. The total 1989 fall flight of ducks and the fall flights in each flyway were predicted to be unchanged from those of 1988. However, because of the continued poor status of ducks, hunting regulations were developed that maintained the reduced hunting opportunity that was established in the 1988–89 season. Hunter numbers remained unchanged, but waterfowl hunters spent more days afield than in the previous year. Many non-regulatory factors influence hunter participation. This was evident during the 1989–90 hunting season, when waterfowl hunters spent 8% more days hunting and bagged 25% more ducks than in 1988–89, while season length and bag limits remained unchanged.

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES.**

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq. The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act of 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–711) and the Fish and Wildlife Improvement Act of 1978, as amended, (92 Stat. 3112; 16 U.S.C. 712).

Dated: February 6, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

Proposed 1991–92 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting migratory game birds during the 1991–92 season are proposed. Changes or possible changes, when noted, are in relation to 1990–91 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive; shooting hours, unless otherwise specified, are one-half hour before sunrise to sunset; and possession limits, unless otherwise specified, are twice the daily bag limit. Items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

1. *Ducks.* (Possible change.) Pending the availability of current information on duck populations, harvest, and habitat conditions, and the receipt of recommendations from the four Flyway Councils, specific duck framework proposals for opening and closing dates, season lengths, and bag limits are deferred. Closed seasons will be considered by the Service if they are warranted.

There are several possible changes that the Service can address in this document. These include the evaluation of framework dates for regular duck seasons, the evaluation of September duck seasons, delineation of canvasback populations and regulation criteria, review of implementation alternatives for stabilized regulations, and the "open season" for States to modify their usage of zones and splits.

A. *Framework Dates for Regular Duck Seasons:* During the 1990 regulations-development cycle, the Service was requested to consider setting framework dates on a permanent basis (i.e., no longer using framework dates to regulate duck harvest). Framework dates are uniform within a flyway and routinely have been either fixed (e.g., an exact date) or floating (e.g., the first Saturday in October). Although framework dates have been changed in response to changes in duck abundance, the dates typically have been between the first week of October and the third week of January. Generally, northern States prefer the opening date to be as early as possible in October, while southern States prefer closing dates to be as late as possible in January. These date preferences reflect the availability of ducks and weather conditions in each State. Mid-latitude States generally are not affected by different framework dates.

The Service currently uses framework dates in combination with other measures in the management of duck harvest levels. The Service agreed to review the role of framework dates in regulating harvest levels. This review will be available in draft form for comment by the Flyway Council Technical Sections during the spring of 1991.

B. *September Duck Seasons:* In 1981, the Service offered Florida, Kentucky, and Tennessee the opportunity to conduct experimental 5-day September duck seasons targeted at blue-winged teal and southern wood ducks. The daily bag limit was 4 birds, only 1 of which could be a species other than teal or wood duck. Memoranda of Agreement between the Service and individual States outlined evaluation procedures for the 1981–83 hunting seasons, which focused on assessing the impacts on wood ducks and non-target waterfowl. Although the three States completed their evaluations and submitted final reports, questions remained about the effects of these seasons and they were continued on an experimental basis. Declines in the survival rates of local wood ducks precipitated a reduction in the daily bag limit to 2 wood ducks in Kentucky and Tennessee in 1986. In 1988, all species except wood ducks were excluded from the September seasons, and the bag limit in Florida was reduced to 3, in response to concerns over the status of continental duck populations. In the June 7, 1988, **Federal Register** (53 FR 20875), the Service asked the Atlantic and Mississippi Flyway Councils to review existing wood duck harvest strategies and give consideration to their proper evaluation. In the March 14, 1990, **Federal Register** (55 FR 9622), the Service gave notice that unless arrangements could be made to initiate regional banding programs and to facilitate widespread data collection, the experimental seasons in Florida, Kentucky, and Tennessee might be modified further or suspended.

In September 1990, representatives from the Service and the Atlantic and Mississippi Flyway Technical Sections met to discuss ways to improve capabilities for monitoring and managing wood duck populations. The feasibility of implementing these improvements will be considered by the Flyway Technical Sections and Councils at their 1991 winter meetings. The Service is encouraged by this recent initiative and, therefore, does not propose to modify or discontinue the September duck seasons in Florida, Kentucky, and Tennessee in 1991. The Service believes this position is justified because the Flyway Councils and the three States involved are continuing efforts to evaluate these seasons and no adverse impacts on wood duck populations are apparent. However, continuation of these seasons beyond 1991 will be contingent upon the ability of the Flyway Councils and States to demonstrate significant progress in developing regional wood duck monitoring plans and evaluation and decision criteria for September wood duck seasons.

In the September 21, 1990, **Federal Register** (55 FR 38901), the Service published a strategy governing the use of shooting hours, which allows shooting to begin at one-half hour before sunrise during the regular duck season, or any season in which most species of ducks can be legally taken. For species-specific seasons, however, shooting hours will begin at sunrise unless States can demonstrate that the impact of pre-sunrise shooting on non-target populations is negligible. With respect to September duck seasons in Florida, Kentucky, and Tennessee, shooting hours have always begun at one-half hour before sunrise. This practice would be consistent with the Service's shooting hours strategy if most species of ducks could be legally taken. However, since 1988, September duck seasons have been limited to wood ducks only. Therefore, the three States involved will be allowed to continue pre-sunrise shooting during their September season under the condition that they conduct studies or provide information that demonstrates a negligible impact on species other than wood ducks. Unless such information is provided or studies initiated, shooting hours for the September wood duck seasons will begin at sunrise during the 1991 season.

C. *Canvasback Harvest Guidelines:* The Service announced in the harvest management strategies developed for the 1990 duck hunting season that it intended to continue using the decision criteria stated in the "1983 Environmental Assessment on Canvasback Hunting" as a basis for managing Western and Eastern Populations for that year. However, the Service recommended that Flyway Councils review the bases for the current guidelines to determine whether these criteria are still appropriate. Presently, these guidelines call for consideration of all possible actions, including season closure, in order to maintain 3-year average breeding

population indices (BPI's) above specific levels.

Canvasbacks are among the least abundant of the harvested duck species and have a long history of season closures and various restrictive harvest strategies. The lack of an adequate database, particularly banding data, has limited any meaningful evaluation of hunting impacts and has hindered the development of a consistent harvest strategy for canvasbacks.

The fundamental questions prompting a review of canvasback harvest guidelines at this time include:

i. Whether existing guidelines based on specific BPI levels are the most appropriate harvest strategy for maintaining desired population levels; and, if not, what new approaches should be considered?

ii. Whether the delineation of the breeding survey area (strata 1–50) into a Western population (strata 1–12 and 26–29) and an Eastern Population (strata 13–25 and 30–50) correctly represent two distinct populations; and, if not, should harvest management by population units be continued?

The Service will work with the Flyway Councils in accomplishing the review recommended above. It is doubtful that this process can be completed for the 1991–92 season.

D. *Stabilized Regulations:* In 1988, the Service prepared a programmatic document entitled "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)". In this document, alternatives for promulgating framework regulations (i.e., opening/closing dates, season length, daily bag limits, shooting hours) were considered. The Service chose as its preferred alternative "stabilized regulations", in which frameworks would remain relatively constant for fixed periods of time, but would be subject to annual review and modification as dictated by waterfowl population status. Stabilized regulations have many advantages, including improved ability to discern the effects of regulations on populations, more efficient use of resources to achieve migratory bird objectives, and greater predictability in the regulations setting process. Therefore, the Service proposes to develop guidelines to govern the use of stabilized regulations for ducks, including: (1) Frameworks that are appropriate for various population levels, with special considerations for species of concern, and (2) criteria for changing frameworks, such as changes in breeding populations, recruitment, or harvest rates. In accordance with the Supplemental Environmental Impact Statement, the Service hereby requests assistance from the Flyway Councils, States, and other interested parties in accumulating necessary data and in developing harvest guidelines. The Service will then prepare draft guidelines for public review and comment in 1992.

E. *Zones and splits for duck seasons:* In 1988, the Service initiated reviews of several regulatory tools for managing the harvest of ducks. One of these reviews involved zones, which have been operating under a moratorium since 1985, and split seasons, which have been operating under a partial moratorium since 1986. This review revealed that it was not possible to determine the effects of zones and split seasons at the State level. The ability to examine the cumulative effect of zones and splits was somewhat better, and this assessment suggested that these regulatory tools, as used in the past, had not increased continental harvest pressure on ducks.

Nonetheless, the ability to predict the impact of additional zones and split seasons is poor, and the Service felt that some limits should be imposed. Consequently the Service, with assistance from the Flyway Councils, developed a strategy to guide the future use of these regulatory options and published this strategy in the September 21, 1990, **Federal Register** (55 FR 38901). In accordance with the implementation schedule for that strategy, 1991 will be the first of the periodic "open seasons" in which modifications to zones and split seasons can be made.

States planning to change their use of zones and split seasons under the new guidelines in 1991 should advise the Service in writing as soon as possible so that proposed changes may be reviewed prior to the July regulations meetings. Proposed changes must adhere to the guidelines in the above-mentioned **Federal Register** document.

The Service should also be notified by States wishing to take advantage of the "grandfather clause" to continue a zone/split-season configuration that does not adhere to the new guidelines, but which was developed under the Service's 1977 zoning criteria published in the May 25, 1977, **Federal Register** (42 FR 26671). States that have not fulfilled obligations for evaluation as specified in Memoranda of Agreement must complete those requirements or they will be subject to the new, more restrictive guidelines. Major changes in zone boundaries from previous years will not be permitted under the grandfather clause, although some minor modifications of an administrative nature may be allowed.

After the 1991 hunting season, modifications to zone/split-season configurations will only be permitted at 5-year intervals (i.e., 1996, 2001, etc.). However, States may abandon the use of zones or 3-way split seasons in favor of a Statewide continuous or 2-way split season at any time. Five years after any modification of zones or 3-way split seasons, States will be asked to review the effects of that modification.

2. *Sea ducks.* (No change.) A maximum open season of 107 days is proposed during the period between September 15, 1991, and January 20, 1992, with a daily bag limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, in special sea duck hunting areas (as described in the August 14, 1990, **Federal Register** at 55 FR 33270), provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. These limits may be in addition to regular duck bag limits during the regular duck season in the special sea duck hunting areas. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season daily bag and possession limits.

3. *Mergansers.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The daily bag limit is 5 mergansers, including no more than 1 hooded merganser. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks.

4. *Canada Geese.* (No change.) The Canadian Wildlife Service, the four waterfowl Flyway Councils, State conservation agencies, and others traditionally provide population and harvest information used in setting annual regulations for geese and brant. The Midwinter Waterfowl Survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1991 will provide additional information. Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1990–91 are anticipated at this time.

With the increase in resident Canada goose flocks in many parts of the nation, the Service has endorsed the concept of special seasons to control numbers of local breeders and/or nuisance

problems. Criteria for special early seasons were addressed in the June 7, 1988, **Federal Register** (53 FR 20877), but the Service recognizes the need, in certain circumstances, for special late seasons. The Service herein proposes to develop guidelines, including criteria, to provide for the implementation of special late Canada goose seasons, and will solicit comments from Flyway Councils. Any criteria developed will be published for public comment before being implemented.

5. *White-fronted Geese.* (No change.) See item number 4.

6. *Brant.* (No change.) See item number 4.

7. *Snow and Ross's Geese.* (No change.) See item number 4.

8. *Tundra Swan.* (No change.) In Alaska, Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the *Atlantic Flyway.*

—The season will be experimental.
—The season may be 90 days and must occur during the white goose season, but may not extend beyond January 31.
—The States must obtain harvest and hunter participation data.
—In New Jersey, no more than 200 permits may be issued.
—In North Carolina, no more than 6,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the *Central Flyway.*

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.
—In North Dakota, no more than 1,000 permits may be issued. The season must run concurrently with the season for taking light geese.
—In South Dakota, no more than 500 permits may be issued. The season must run concurrently with the season for taking light geese.

In the *Pacific Flyway* (except Alaska).

—A 93-day season may be selected between the Saturday closest to October 1 (September 30, 1991), and the Sunday closest to January 20 (January 21, 1992). Seasons may be split into 2 segments.
—The States must obtain harvest and hunter participation data.
—In Utah, no more than 2,500 permits may be issued.
—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, or Pershing Counties.
—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, or Toole Counties.

In *Alaska.*

—The season will be experimental.
—The season must run concurrently with the duck season.
—The State must obtain harvest and hunter participation data and report the results to the Service by June 1, 1992.
—No more than 300 permits may be issued. Permits will be valid in Gam, Management Unit 22.

9. *Sandhill cranes.*

Central Flyway—Regular seasons (No change). Pending evaluation of harvest data from the 1990–91 seasons, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma and Texas outside the range of the Rocky Mountain Population of sandhill cranes, with no substantial changes in dates from the 1990–91 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes. The provision for a Federal sandhill crane hunting permit is continued in all of the above areas.

Central and Pacific Flyways—Special seasons (No change). Pending evaluation of harvest data from the 1990–91 seasons, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming subject to the following conditions:

A. Outside dates are September 1–November 30, 1991; except September 1, 1991–January 31, 1992, in the Hatch-Deming Zone of southwestern New Mexico.

B. Season(s) in any State or zone may not exceed 30 days.

C. Daily bag limits may not exceed 3, and season limits may not exceed 9.

D. Participants must have in their possession, while hunting, a valid permit issued by the appropriate State.

E. Numbers of permits, areas open, season dates, protection plans for other species, and other provisions of seasons are consistent with the management plan and approved by the Central and Pacific Flyway Councils.

F. All hunts, except those in Arizona, Wyoming, and the Middle Rio Grande Valley of New Mexico, will be experimental.

10. *Coots.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 coots, concurrent with the regular duck season; while States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules, between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93 days.

11. *Common Moorhens and Purple Gallinules.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons of not more than 70 days between September 1, 1991, and January 20, 1992. Any State may split its moorhen/gallinule season into two segments without penalty. The daily bag limits may not exceed 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons to occur between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93 days. The daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

12. *Rails.* (No change.) The States included herein may select seasons between September 1, 1991, and January 20, 1992, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails.

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag limits may not exceed 10 clapper and king rails, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, SouthCarolina, North Carolina, and Virginia, the daily bag limits may not exceed 15 clapper and king rails, singly or in the aggregate of these two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails.

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in

the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

13. *Common snipe.* (No change.) The Service completed a preliminary assessment of the framework closing date for snipe. The Service believes that a closing date of February 28 will not negatively impact snipe populations because snipe, in contrast to woodcock, tend to nest in more northern areas and at a later date. In addition, there is currently no indication of a declining trend in snipe populations.

States may select hunting seasons between September 1, 1991, and February 28, 1992, not to exceed 107 days. Daily bag limits may not exceed 8 snipe. Any State may split its snipe season into two segments.

14. *Woodcock.* (Possible change.) The Service, in cooperation with the Flyway Councils, is reviewing the framework closing date, based on concern about the potential impacts of woodcock harvest during late winter and during spring migration to their breeding areas in light of the downward trend of woodcock populations in both the Eastern and Central Regions. Before 1970, the closing framework date offered by the Service for woodcock hunting seasons could be no later than January 31. In 1970, States were offered a February 15 woodcock season closing date. Starting in 1972, the Federal framework closing date was shifted to the last day in February. Subsequently, there were reports of nesting woodcock being shot during February seasons in some southern States. In 1985, the Service responded to declining breeding populations in the Eastern Region by moving the closing date to January 1 as part of a broader harvest-reduction package. The closing framework date for Central-Region States remained the last day of February. Four Central-Region States (Arkansas, Louisiana, Mississippi, and Tennessee) currently select woodcock seasons ending in February. In 1988, Pennsylvania (through the Atlantic Flyway council) asked the Service to discontinue this option. Pennsylvania felt that late-season mortality also affected the Eastern Region woodcock that winter in the southern States of the Central Region. In 1989, the Northeast Association of Fish and Wildlife Resource Agencies, the Ruffed Grouse Society, National Audubon Society, and the State of Alabama suggested that the Service restrict the option of hunting woodcock in February. In the August 14, 1990, **Federal Register** (55 FR 33266), the Service stated its intent to work with the Flyway Councils to develop background materials on hunting of woodcock in February. However, the Service stated that unless sufficient justification was developed to continue February woodcock hunting, the Service would propose a change.

The Service proposes changing the outside closing date for hunting woodcock to January 31 based on the following reasons: (1) Breeding occurs earlier and at higher densities in the South than was previously believed; (2) there are indications of long-term breeding population declines in both the Eastern and Central Regions; (3) hunting mortality is more likely to adversely affect the population dynamics of woodcock when it occurs immediately before or during the breeding season; (4) sportsmen express concern when woodcock flushed and shot during February seasons are found to have been nesting or contain eggs in their reproductive tracts; and (5) the impact on the population status of woodcock would be even greater if more States select February seasons.

The hunting of a few other migratory bird species is permitted during February (e.g., common snipe, snow geese). However, those situations are distinct from this proposal because those species are not declining and are not beginning their reproductive season at that time. The Service reiterates its request for any additional information that the States or Flyway councils may be able to provide. The Service proposes a framework closing date of January 31 pending any new proposals or information that may be provided.

A. *Central and Mississippi Flyways.*

States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with a daily bag limit of 5 woodcock, to occur between September 1, 1991 and January 31, 1992. States may split their woodcock season without penalty.

B. *Atlantic Flyway.*

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with a daily bag limit of 3 woodcock, to occur between October 1, 1991, and January 31, 1992. States may split their woodcock season without penalty.

New Jersey may select seasons by North and South zones divided by State highway 70. The season in each zone may not exceed 35 days.

15. *Band-tailed pigeons.* (No change.)

A. *Pacific Coast States* (California, Oregon, Washington, and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey). These States may select hunting seasons not to exceed 16 consecutive days between September 15, 1991, and the Sunday closest to January 1, 1992. The daily bag and possession limits may not exceed 2 band-tailed pigeons.

California may zone by selecting hunting seasons of 16 consecutive days for each of the following two zones:

i. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

ii. The remainder of the State.

The season in the north zone of California must close by October 6.

B. *Four-Corners States* (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1991. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1991, in the North Zone, and October 1 and November 30, 1991, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

16. *Mourning doves.* (No change.) Pending results of the call-count survey and receipt of additional information and recommendations, the Service proposes the following frameworks during the 1991–92 hunting season. Outside framework dates will be September 1, 1991, and January 15, 1992, except as otherwise provided. States in the Eastern (EMU) and Central (CMU) Management Units are offered an option of a season length of 70 days with a daily bag limit of 12, or a season length of 60 days with a daily bag limit of 15 birds. EMU and CMU States may select hunting seasons by zone without penalty and split the season into not more than 3 segments. In the Western Management Unit (WMU), seasons in Idaho, Nevada, Oregon, Utah, and Washington may not exceed 30 consecutive days between September 1, 1991, and January 15, 1992; and seasons in Arizona and California may not exceed 60 days to be split between 2 periods, September 1–15, 1991, and November 1, 1991–January 15, 1992. The daily bag limit is 10 mourning doves.

17. *White-winged and white-tipped doves.* (Possible change.) The Service

proposes the following frameworks during the 1991–92 season: Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1991, and daily bag limits as stipulated below.

A. *Arizona* may select a hunting season of not more than 30 consecutive days running concurrently with the mourning dove season (see mourning dove frameworks-WMU above). The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves.

B. *Nevada,* in the counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit of mourning doves and white-winged doves may not exceed 10, singly or in the aggregate. The season length must conform to the mourning dove season (either a 60-day split season or a 30-day consecutive season as stipulated under mourning dove frameworks-WMU above).

C. *New Mexico* may select a hunting season with daily bag limits not to exceed 12 (or 15 if the 60-day option for mourning doves is selected) white-winged and mourning doves, singly or in the aggregate of the two species. Dates, limits, and hours are to conform with those for mourning doves.

D. *Texas* may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. In that portion of the special area north and west of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In that portion of the special area south and east of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. The experimental daily bag limits are dependent on annual review of the special white-winged dove season. The Service remains concerned about the status of white-winged doves in this portion of Texas and, pending 1991 breeding population information, may consider modification of this season and other alternative actions.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1991 (September 20, 1991, in South Zone), and January 25, 1992, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and 2 may be white-tipped doves.

E. *Florida* may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1991, and January 15, 1992, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings.

18. *Migratory bird hunting seasons in Alaska.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1991–92

Outside Dates: Between September 1, 1991, and January 26, 1992 Alaska may select seasons on waterfowl, snipe, sandhill cranes, and tundra swans subject to the following limitations:

Hunting Seasons:

Ducks, geese, and brant—Not more than 107 consecutive days for ducks, geese, and brant in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10-except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exceptions: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State, there is no open hunting season for Aleutian Canada geese, cackling Canada geese, and emperor geese.

Snipe and sandhill cranes—An open season must be concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of not more than 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. These basic limits may not include more than 2 pintails daily and 6 in possession, and 2 canvasback daily and 6 in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2 and a possession limit of 4.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

Tundra swan—In Game Management Unit 22, an experimental open season for tundra swans may be selected subject to the following conditions:

A. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

B. The season must be concurrent with the duck season.

C. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1, 1991.

19. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, as has been done in the past, and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1991, and January 15, 1992; the length may not exceed 60 (or 70 under the alternative) days; and the daily bag limits may not exceed 15 (or 12 under the alternative) doves. Other applicable Federal regulations relating to migratory game birds shall also apply.

20. *Puerto Rico and the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico. 1991–92

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1, 1991, and January 31, 1992, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into 2 segments.

Daily Bag Limits:

Ducks—Not to exceed 3 daily, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); the White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck

(*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*), which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots (*Fulica americana*) and Caribbean coots (*Fulica carabaea*).

Common Moorehens—Not to exceed 6 daily, except that the season is closed on purple gallinules (*Porphyrula martinica*).

Common snipe—Not to exceed 6 daily.

Closed Areas: There is no open season for ducks, common moorhens, or snipe in the Municipality of Culebra and on Desecheo Island.

Doves and Pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1991, and January 15, 1992, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Vieques Island—closed due to habitat destruction caused by hurricane Hugo.

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—closed to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

El Verde Closure Area—consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot (Amazona vittata), presently listed as an endangered species under the Endangered Species Act.

Cidra municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon (*Columba inornata wetmorei*), locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in the Virgin Islands, 1991–92

Ducks

Outside Dates: Between December 1, 1991, and January 31, 1992, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag Limits: Not to exceed 3 daily, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyrua dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1991, and January 15, 1992, as follows.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamose*)—red-necked pigeon, scaled pigeon.

21. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods, the combined length for the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1991 and March 10, 1992.

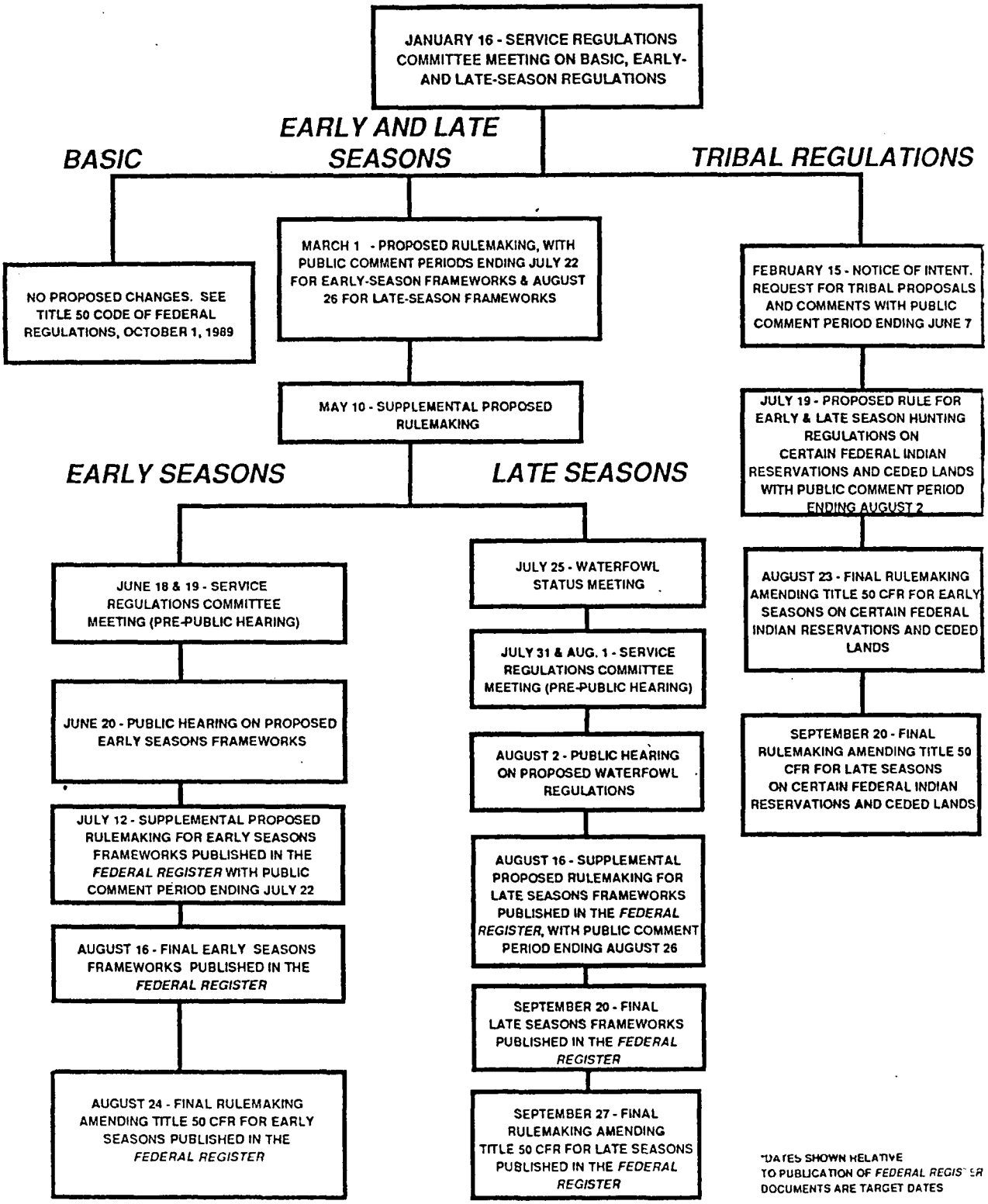
Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended season.

Regular Seasons: General hunting regulations, including seasons and hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Note: The extension of this framework to include the period September 1, 1990-March 10, 1991, and the option to split the extended falconry season into a maximum of 3 segments are considered tentative, and may be evaluated in cooperation with States offering such extensions after a period of several years.

BILLING CODE 4310-55-M

1991 SCHEDULE OF REGULATIONS MEETINGS AND *FEDERAL REGISTER* PUBLICATIONS*



[FR Doc. 91-5178 Filed 3-5-91; 8:45 am]
BILLING CODE 4310-55-C

federal register

Wednesday
March 6, 1991

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Chapter I

Final Fair Housing Accessibility Guidelines

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Ch. I

[Docket No. N-91-2011; FR 2665-N-06]

Final Fair Housing Accessibility Guidelines

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Final Fair Housing Accessibility Guidelines.

SUMMARY: This document presents guidelines adopted by the Department of Housing and Urban Development to provide builders and developers with technical guidance on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. Issuance of this document follows consideration of public comment received on proposed accessibility guidelines published in the **Federal Register** on June 15, 1990. The guidelines presented in this document are intended to provide technical guidance only, and are not mandatory. The guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix II to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. II). The preamble to the guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III).

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Merle Morrow, Office of HUD Program Compliance, room 5204, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410-0500, telephone (202) 708-2618 (voice) or (202) 708-0015 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Adoption of Final Guidelines

The Department of Housing and Urban Development (Department) is adopting as its Fair Housing Accessibility Guidelines, the design and construction guidelines set forth in this notice (Guidelines). Issuance of this document follows consideration of public comments received in response to an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines, published in the **Federal Register** on August 2, 1989 (54 FR 31856), and in response to proposed accessibility guidelines published in the **Federal Register** on June 15, 1990 (55 FR 24730).

The Department is adopting as final Guidelines, the guidelines designated as Option One in the proposed guidelines published on June 15, 1990, with modifications to certain of the Option One design specifications. In developing the final Guidelines, the Department was cognizant of the need to provide technical guidance that appropriately implements the specific accessibility requirements of the Fair Housing Amendments Act of 1988, while avoiding design specifications that would impose an unreasonable burden on builders, and significantly increase the cost of new multifamily construction. The Department believes that the final Guidelines adopted by this notice (1) are consistent with the level of accessibility envisioned by Congress; (2) simplify compliance with the Fair Housing Amendments Act by providing guidance concerning what constitutes acceptable compliance with the Act; and (3) maintain the affordability of new multifamily construction by specifying reasonable design and construction methods.

The Option One design specifications substantially revised in the final Guidelines include the following:

(1) Site impracticality. The final Guidelines provide that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route regardless of terrain or unusual characteristics of the site. Every dwelling unit on a floor served by an elevator must be on an accessible route, and must be made accessible in accordance with the Act's requirements for covered dwelling units.

For covered multifamily dwellings without elevators, the final Guidelines provide two alternative tests for determining site impracticality due to terrain. The first test is an individual building test which involves a two-step process: measurement of the slope of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points; and measurement of the slope of the planned finished grade between the entrance and all vehicular or pedestrian arrival points. The second test is a site analysis test which involves an analysis of the existing natural terrain (before grading) by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval.

A site with a single building (without an elevator), having a common entrance for all units, may be analyzed only under the first test—the individual building test. All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed either under the first test or the second test. For sites for which either test is applicable (that is, all sites other than a site with a single nonelevator building having a common entrance for all units), the final Guidelines provide that regardless of which test is utilized by a builder or developer, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the Act's accessibility requirements.

(2) An accessible route into and through covered dwelling units. The final Guidelines distinguish between (i) single-story dwelling units, and (ii) multistory dwelling units in elevator buildings, and provide guidance on designing an accessible entrance into and through each of these two types of dwelling units.

(a) Single-story dwelling units. For single-story dwelling units, the final Guidelines specify the same design specification as presented in the proposed Option One guidelines, except that design features within the single-story dwelling units, such as a loft or a sunken living room, are exempt from the access specifications, subject to certain requirements. Lofts are exempt provided that all other space within the units is on an accessible route. Sunken or raised functional areas, such as a sunken living room, are also exempt from access specifications, provided that such areas do not interrupt the accessible route through the remainder of the unit. However, split-level entries or areas will need ramps or other means of providing an accessible route.

(b) Multistory dwelling units in buildings with elevators. For multistory dwelling units in buildings with elevators, the final Guidelines specify that only the story served by the building elevator must comply with the accessible features for dwelling units required by the Fair Housing Act. The other stories of the multistory dwelling units are exempt from access specifications, provided that the story of the unit that is served by the building elevator (1) is the primary entry to the unit; (2) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement 7.

(c) Thresholds at patio, deck or balcony doors. The final Guidelines provide that exterior deck, patio, or balcony surfaces should be not more

than ½ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious materials such as concrete, brick or flagstone, in which case the surface should be no more than 4 inches below the floor level of the interior dwelling units, unless the local building code requires a lower drop. This provision and the following provision were included in order to minimize the possibility of interior water damage when exterior surfaces are constructed of impervious materials.

(d) Outside surface at entry door. The final Guidelines also provide that at the primary entry door to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than ½ inch below the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than ⅛ inch per foot.

(3) Usable bathrooms. The final Guidelines provide two alternative sets of specifications for making bathrooms accessible in accordance with the Act's requirements. The Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be achieved. The final Guidelines for usable bathrooms also provide that the usable bathroom specifications (either set of specifications) are applicable to powder rooms (i.e., a room with only a toilet and a sink) when the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit.

The details about, and the reasons for these modifications, and additional minor technical modifications made to certain design specifications of the Option One guidelines, are discussed more fully in the section-by-section analysis which appear later in this preamble.

Principal features of the Option One guidelines that were not changed in the final Guidelines include the following:

(1) Accessible entrance and an accessible route. The Option One guidelines for these two requirements remain unchanged in the final Guidelines.

(2) Accessible and usable public and common use areas. The Option One guidelines for public and common use areas remain unchanged in the final Guidelines.

(3) Door within individual dwelling units. The final Guidelines recommend that doors intended for user passage within individual dwelling units have a clear opening of at least 32 inches nominal width when the door is open 90 degrees.

(4) Doors to public and common use areas. The final Guidelines continued to provide that on accessible routes in public and common use areas, and for primary entry doors to covered units doors that comply with ANSI 4.13 meet the Act's requirement for "usable" doors.

(4) Thresholds at exterior doors. Subject to the exceptions for thresholds and changes in level at exterior areas constructed of impervious materials, the final Guidelines continue to specify that thresholds at exterior doors, including sliding door tracks, be no higher than ¾ inch.

(5) Reinforced walls for grab bars. The final Guidelines for bathroom wall reinforcement remains essentially unchanged from the Option One guidelines. The only change made to these guidelines has been to subject powder rooms to the reinforced wall requirement when the powder room is the only toilet facility on the accessible floor of a covered multistory dwelling unit.

The text of the final Guidelines follows the Preamble, which includes a discussion of the public comments received on the proposed guidelines, and the section-by-section analysis referenced above.

The design specification presented in the Fair Housing Accessibility Guidelines provide technical guidance to builders and developers in complying with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. The Guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Amendments Act, as implemented by 24 CFR 100.205 of the Department's Fair Housing regulations. The Guidelines are not mandatory. Additionally, the Guidelines do not prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Amendments Act. Builders and developers may choose to depart from the Guidelines, and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act.

II. Statutory and Regulatory Background

Title VIII of the Civil Rights Act of 1968 makes it unlawful to discriminate in any aspect relating to the sale, rental or financing of dwellings, or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex or national origin. The Fair Housing Amendments Act of 1988 (Pub. L. 100-430, approved September 13, 1988) (Fair Housing Act or the Act) expanded coverage of title VIII (42 U.S.C. 3601-3620) to prohibit discriminatory housing practices based on handicap and familial status. As amended, section 804(f)(3)(C) of the Act provides that unlawful discrimination includes a failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 (30 months after the date of enactment in accordance with certain accessibility requirements. The Act defines "covered multifamily dwellings" as "(a) buildings consisting of 4 or more units if such buildings have one or more elevators; and (b) ground floor units in other buildings consisting of 4 or more units" (42 U.S.C. 3604).

The Act makes it unlawful to fail to design and construct covered multifamily dwellings so that:

(1) Public use and common use portions of the dwellings are readily accessible to and usable by persons with handicaps;

(2) All doors within such dwellings which are designed to allow passage into and within the premises are sufficiently wide to allow passage by persons in wheelchairs; and

(3) All premises within such dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;

(b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(c) Reinforcements in bathroom walls to allow later installation of grab bars; and

(d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

The Act provides that compliance with (1) the appropriate requirements of the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (commonly cited as "ANSI A117.1"), or (2) with the laws of a State or unit of general local government, that has incorporated into such laws the accessibility requirements of the Act, shall be deemed to satisfy the accessibility requirements of the Act. (See section 804(f)(4) and (5)(A).) The Act also provides that the Secretary of the Department of Housing and Urban

Development shall provide technical assistance to States and units of local government and other persons to implement the accessibility requirements of the Act. (See section 804(f)(5)(C).)

Congress believed that the accessibility provisions of the Act would (1) facilitate the ability of persons with handicaps to enjoy full use of their homes without imposing unreasonable requirements on homebuilders, landlords and non-handicapped tenants; (2) be essential for equal access and to avoid future *de facto* exclusion of persons with handicaps; and (3) be easy to incorporate in housing design and construction. Congress predicted that compliance with these minimal accessibility design and construction standards would eliminate many of the barriers which discriminate against persons with disabilities in their attempts to obtain equal housing opportunities. (See H.R. Rep. No. 711, 100th Cong. 2d Sess. 27–28 (1988) ("House Report").)

The Fair Housing Act became effective on March 12, 1989. The Department implemented the Act by a final rule published January 23, 1989 (54 FR 3232), and which became effective on March 12, 1989. Section 100.205 of that rule incorporates the Act's design and construction requirements, including the requirement that multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. The final rule clarified which multifamily dwellings are subject to the Act's requirements. Section 100.205 provides, in paragraph (a), that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date, or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The Department selected the date of January 13, 1990 because it is fourteen months before March 13, 1991. Based on data contained in the Marshall Valuation Service, the Department found that fourteen months represented a reasonable median construction time for multifamily housing projects of all sizes. The Department chose the issuance of a building permit as the appropriate point in the building process because such permits are issued in writing by governmental authorities. The issuance of a building permit has the advantage of being a clear and objective standard. In addition, any project that actually achieves first occupancy before March 13, 1991 will be judged to have met this standard even if the last building permit or renewal thereof was issued after January 13, 1990 (55 FR 3251).

Section 110.205 of the final rule also incorporates the Act's provisions that compliance with the appropriate requirements of ANSI A117.1, or with State or local laws that have incorporated the Act's accessibility requirements, suffices to satisfy the accessibility requirements of the Act as codified in § 100.205. In the preamble to the final rule, the Department stated that it would provide more specific guidance on the Act's accessibility requirements in a notice of proposed guidelines that would provide a reasonable period for public comment on the guidelines.

III. Proposed Accessibility Guidelines

On August 2, 1989, the Department published in the **Federal Register** an advance notice of intention to develop and publish Fair Housing Accessibility Guidelines (54 FR 31856). The purpose of this document was to solicit early comment from the public concerning the content of the Accessibility Guidelines, and to outline the Department's procedures for their development. To the extent practicable, the Department considered all public comments submitted in response to the August 2, 1989 advance notice in its preparation of the proposed accessibility guidelines.

On June 15, 1990, the Department published proposed Fair Housing Accessibility guidelines (55 FR 24370). The proposed guidelines presented, and requested public comment on, three options for accessible design:

(1) Option one (Option One) provided guidelines developed by the Department with the assistance of the Southern Building Code Congress International (SBCCI), and incorporated suggestions received in response to the August 2, 1989 advance notice;

(2) Option two (Option Two) offered guidelines developed by the National Association of Home Builders (NAHB) and the National Coordinating Council on Spinal Cord Injuries (NCCSCI); and

(3) Option three (Option Three) offered "adaptable accommodations" guidelines, an approach that provides for identification of certain features in dwelling units that could be made accessible to people with handicaps on a case-by-case basis.

In the June 15, 1990 notice of proposed guidelines, the Department recognized that projects then being designed, in advance of publication of the final Guidelines may not become available for occupancy until after March 13, 1991. The Department advised that efforts to comply with the proposed guidelines, Option One, in the design of projects which would be completed before issuance of the final Guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. Following publication of the June 15, 1990 notice, the Department received a number of inquiries concerning whether certain design and construction activities in connection with projects likely to be completed before issuance of final Guidelines would be considered by the Department to be in compliance with the Act.

In order to resolve these questions, the Department, on August 1, 1990, published in the **Federal Register** a supplementary notice to the proposed guidelines (55 FR 31191). In the supplementary notice, the Department advised that it only would consider efforts to comply with the proposed guidelines, Option One, as evidence of compliance with the Act. The Department stated that evidence of compliance with the Option One guidelines, under the circumstances described in the supplementary notice, would be a basis for determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred, or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings. The circumstances described in the August 1, 1990 supplementary notice that the Department found would be in compliance with the Act, were limited to:

(1) Any covered multifamily dwellings which are designed in accordance with the Option One guidelines, and for which construction is completed before publication of the final Fair Housing Accessibility Guidelines; and

(2) Any covered multifamily dwellings which have been designed in accordance with the Option One guidelines, but for which construction is not completed by the date of publication of the final Guidelines provided:

(a) Construction begins before the final Guidelines are published; or

(b) A building permit is issued less than 60 days after the final Guidelines are published.

On September 7, 1990, the Department published for public comment a Preliminary Regulatory Impact Analysis on the Department's assessment of the economic impact of the Guidelines, as implemented by each of the three design options then under consideration (55 FR 37072–37129).

IV. Public Comments and Commenters

The proposed guidelines provided a 90-day period for the submission of comments by the public, ending September 13, 1990. The Department received 562 timely comments. In addition, a substantial number of comments were received by the Department after the September 13, 1990 deadline. Although those comments were not timely filed, they were reviewed to assure that any major issues raised had been adequately addressed in comments that were received by the deadline. Each of the timely comments was read, and a list of all significant issues raised by those comments was compiled. All these issues were considered in the development of the final Guidelines.

Of the 562 comments received, approximately 200 were from disability advocacy organizations, or units of State or local government concerned with disability issues. Sixty-eight (68) additional commenters identified themselves as members of the disability community; 61 commenters identified themselves as individuals who work with members of the disability community (e.g., vocational or physical therapists or counselors), or who have family members with disabilities; and 96 commenters were members of the building industry, including architects, developers, designers, design consultants, manufacturers of home building products, and rental managers. Approximately 292 commenters supported Option One without any recommendation for change An additional 155 commenters supported Option One, but recommended changes to certain Option One design standards. Twenty-six (26) commenters supported Option Two, and 10 commenters supported Option Three. The remaining commenters submitted questions, comments and recommendations for changes on certain design features of one or more of the three options, but expressed no preference for any particular option, or, alternatively, recommended final guidelines that combine features from two or all three of the options.

The Commenters

The commenters included several national, State and local organizations and agencies, private firms, and individuals that have been involved in the development of State and local accessibility codes. These commenters offered valuable information, including copies of State and local accessibility codes, on accesibility design standards. These commenters included: the Southern Building Code Congress International (SBCCI); the U.S. Architectural and Transportation Barriers Compliances Board (ATBCB); the Building Officials & Code Administrators International, Inc. (BOCA); the State of Washington Building Code Council; the Seattle Department of Construction and Land Use; the Barrier-free Subcode Committee of the New Jersey Uniform Construction Code Advisory Board; the Department of Community Planning, Housing and Department of Arlington County, Virginia; the City of Atlanta Department of Community Development, Bureau of Buildings; and members of the Department of Architecture, the State of University of New York at Buffalo. In addition to the foregoing organizations, a number of the commenters from the building industry submitted detailed comments on the proposed guidelines.

The commenters also included a number of disability organizations, several of which prepared detailed comments on the proposed guidelines. The comments of two disability organizations also were submitted as concurring comments by many individuals and other disability advocacy organizations. These two organizations are the Disability Rights Education & Defense Fund, and the Consortium for Citizens with Disabilities (CCD). The CCD represents the following organizations: the Association for Education and Rehabilitation of the Blind and Visually Impaired, Association for Retarded Citizens of the United States, International Association of Psychological Rehabilitation Facilities, National Alliance for the Mentally Ill, National Association of Protection and Advocacy Systems, National Association of Developmental Disabilities Councils, National Association of State Mental Health Program Directors, National Council of Community Mental Health Centers, National Head Injury Foundation, National Mental Health Association, United Cerebral Palsy Associations, Inc. Both the Disability Rights Education and Defense Fund and the CCD were strongly supportive of Option One.

A coalition of 20 organizations (Coalition), representing both the building industry and the disability community, also submitted detailed comments on the proposed guidelines. The members of the Coalition include: American Institute of Architects, American Paralysis Association, American Resort and Residential Development Association, American Society of Landscape Architects, Apartment and Office Building Association, Association of Home Appliance Manufacturers, Bridge Housing Corporation, Marriott Corporation, Mortgage Bankers Association, National Apartment Association, National Assisted Housing Management Association, National Association of Home Builders (NAHB), National Association of Realtors, National Association of Senior Living Industries, National Conference of States on Building Codes and Standards, National Coordinating Council on Spinal Cord Injury (NCCSCI), National Leased Housing Association, National Multi Housing Council, National Organization on Disability, and the Paralyzed Veterans of America.

The commenters also included U.S. Representatives Don Edwards, Barney Frank and Hamilton Fish, Jr., who advised that they were the primary sponsors of the Fair Housing Act, and who expressed their support of Option One.

Comments on the Three Options

In addition to specific issues and questions raised about the design standards recommended by the proposed guidelines, a number of commenters simply submitted comments on their overall opinion of one or more of the options. Following is a summary of the opinions typically expressed on each of the options.

Option One. The Option One guidelines drew a strong reaction from commenters. Supporters stated that the Option One guidelines provided a faithful and clearly stated interpretation of the Act's intent. Opponents of Option One stated that its design standards would increase housing costs significantly—for everyone. Several commenters who supported some features of Option One were concerned that adoption of Option One in its entirety would escalate housing costs. Another frequent criticism was that Option One's design guidelines were to complex and cumbersome.

Option Two. Supporters of Option Two state that this option presented a reasonable compromise between Option One and Option Three. Supporters stated that the Option Two guidelines provided more design flexibility than the Option One guidelines, and that this flexibility would allow builders to deliver the required accessibility features at a lower cost. Opponents of Option Two stated that this option allowed builders to circumvent the Act's intent with respect to several essential accessibility features.

Option Three. Supporters of Option Three stated that Option Three presented the best method of achieving the accessibility objectives of the Act, at the lowest possible cost. Supporters stated that Option Three would contain housing costs, because design adaptation only would be made to those units which actually would be occupied by a disabled resident, and the adaptation would be tailored to the specific accessibility needs of the individual tenant. Opponents of Option Three stated that this option, with its "add-on" approach to accessibilty, was contrary to the Act's intent, which, the commenter claimed, mandates accessible features at the time of construction.

Comments on the Costs of Implementation

In addition to the comments on the specific features of the three design options, one of the issues most widely commented upon was the cost of compliance with the Act's accessibility requirements, as implemented by the Guidelines. Several commenters disputed the Department's estimate of the cost of compliance, as presented in the Initial Regulatory Flexibility Analysis, published with the proposed guidelines on June 15, 1990 (55 FR 24384–24385), and in the Preliminary Regulatory Impact Analysis published on September 7, 1990 (55 FR 37072–37129). The Department's response to these comments is discussed in the Final Regulatory Impact Analysis, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

V. Discussion of Principal Public Comment Issues, and Section-by-Section Analysis of the Final Guidelines.

The following presents a discussion of the principal issues raised by the commenters, and the Department's response to each issue. This discussion includes a section-by-section analysis of the final Guidelines that addresses many of the specific concerns raised by the commenter, and highlights the differences between the proposed Option One guidelines and the final Guidelines. Comments related to issues outside the purview of the Guidelines, but related to the Act (e.g., enforcement procedures, statutory effective date), are discussed in the final section of the preamble under the preamble heading "Discussion of Comments on Related Fair Housing Issues".

1. Discussion of General Comments on the Guidelines

ANSI Standard

Comment. Many commenters expressed their support for the ANSI Standard as the basis for the Act's Guidelines, because ANSI is a familiar and accepted accessibility standard.

Response. In developing the proposed and final Guidelines, the Department was cognizant of the need for uniformity, and of the widespread application of the ANSI Standard. The original ANSI A117.1, adopted in 1961, formed the technical basis for the first accessibility standards adopted by the Federal Government, and most State governments. The 1980 edition of that standard was based on research funded by the Department, and became the basis for the Uniform Federal Accessibility Standards (UFAS), published in the **Federal Register** on August 4, 1984 (47 FR 33862). The 1980 edition also was generally accepted by the private sector, and was recommended for use in State and local building codes by the Council of American Building Officials. Additionally, Congress, in the Fair Housing Act, specifically referenced the ANSI Standard, thereby encouraging utilization of the ANSI Standard as guidance for compliance with the Act's accessibility requirements. Accordingly, in using the ANSI Standard as a reference point for the Fair Housing Act Accessibility Guidelines, the Department is issuing Guidelines based on existing and familiar design standards, and is promoting uniformity between Federal accessibility standards, and those commonly used in the private sector. However, the ANSI Standard and the final Guidelines have differing purposes and goals, and they are by no means identical. The purpose of the Guidelines is to describe minimum standards of compliance with the specific accessibility requirements of the Act.

Comment. Two commenters suggested that the Department adopt the ANSI Standard as the guidelines for the Fair Housing Act's accessibility requirements, and not issue new guidelines.

Response. The Department has incorporated in the Guidelines those technical provisions of the ANSI Standard that are consistent with the Act's accessibility requirements. However, with respect to certain of the Act's requirements, the applicable ANSI provisions impose more stringent design standards than required by the Act. (In the preamble to the proposed rule (55 FR 3251), and again in the preamble to the proposed guidelines (55 FR 24370), the Department advised that a dwelling unit that complies fully with the ANSI Standard goes beyond what is required by the Fair Housing Act.) The Department has developed Guidelines for those requirements of the Act where departures from ANSI were appropriate.

Comment. A few commenters questioned whether the Department would revise the Guidelines to correspond to ANSI's periodic update of its standard.

Response. The ANSI Standard is reviewed at five-year intervals. As the ANSI Standard is revised in the future, the Department intends to review each version, and, if appropriate to make revisions to the Guidelines in accordance with any revisions made to the ANSI Standard. Modifications of the Guidelines, whether or not reflective of changes to the ANSI Standard, will be subject to notice and prior public comment.

Comment. A few commenters requested that the Department republish the ANSI Standard in its entirety in the final Guidelines.

Response. The American National Standards Institute (ANSI) is a private, national organization, and is not connected with the Federal Government. The Department received permission from ANSI to print the ANSI Standard in its entirety, as the time of publication of the proposed guidelines (55 FR 24404–24487), specifically for the purpose of assisting readers of the proposed guidelines in developing timely comments. In the preamble to the proposed guidelines, the Department stated that since it was printing the entire ANSI Standard, as an appendix to the proposed guidelines, the final notice of the Accessibility Guidelines would not include the complete text of the ANSI Standard (55 FR 24371). Copies of the ANSI Standard may be purchased from the American National Standards Institute, 1430 Broadway, New York, NY 10018.

Comment. Another commenter requested that the Department confirm that any ANSI provision not cited in the final Guidelines is not necessary for compliance with the Act.

Response. In the proposed guidelines, the Department stated that: "Where the guidelines rely on sections of the ANSI Standard, the ANSI sections are cited. * * * For those guidelines that differ from the ANSI Standard, recommended specifications are provided" (55 FR 24385). The final Guidelines include this statement, and further state that the ANSI sections not cited in the Guidelines have been determined by the

Department not to be necessary for compliance with the Act's requirements.

Bias Toward Wheelchair Users

Comment. Two commenters stated that the proposed guidelines were biased toward wheelchair users, and that the Department has erroneously assumed that the elderly and the physically disabled have similar needs. The commenters stated that the physical problems suffered by the elderly often involve arthritic and back problems, which make bending and stooping difficult.

Response. The proposed guidelines, and the final Guidelines, reflect the accessibility requirements contained in the Fair Housing Act. These requirements largely are directed toward individuals with mobility impairments, particularly those who require mobility aids, such as wheelchairs, walkers, or crutches. In two of the Act's accessibility requirements, specific reference is made to wheelchair users. The emphasis of the law and the Guidelines on design and construction standards that are compatible with the needs of wheelchair users is realistic because the requirements for wheelchair access (e.g., wider doorways) are met more easily at the construction stage. (See House Report at 27.) Individuals with nonmobility impairments more easily can be accommodated by later nonstructural adaptations to dwelling units. The Fair Housing Act and the Fair Housing regulations assure the right of these individuals to make such later adaptations. (See section 804(f)(3)(A) of the Act and 24 CFR 100.203 of the regulations. See also discussion of adaptations made to units in this preamble under the heading "Costs of Adaptation" in the section entitled "Discussion of Comments on Related Fair Housing Issues".)

Compliance Problems Due to Lack of Accessibility Guidelines

Comment. A number of commenters from the building industry attributed difficulty in meeting the Act's March 13, 1991 compliance deadline, in part, to the lack of accessibility guidelines. The commenters complained about the time that it has taken the Department to publish proposed guidelines, and the additional time it has taken to publish final Guidelines.

Response. The Department acknowledges that the development and issuance of final Fair Housing Accessibility Guidelines has been a time-consuming process. However, the building industry has not been without guidance on compliance with the Act's accessibility requirements. The Fair Housing Act identifies the ANSI Standard as providing design standards that would achieve compliance with the Act's accessibility requirements. Additionally, in the preamble to both the proposed and final Fair Housing rule, and in the text of §100.205, the Department provided examples of how certain of the Act's accessibility requirements may be met. (See 53 FR 45004–45005, 54 FR 3249–3252 (24 CFR Ch. I, Subch. A, App. I, at 583–586 (1990)), 24 CFR 100.205.)

The delay in publication of the final Guidelines has resulted, in part, because of the Department's pledge, at the time of publication of the final Fair Housing regulations, that the public would be provided an opportunity to comment on the Guidelines (54 FR 3251, 24 CFR Ch. I, Subch. A, at 585–586 (1990)). The delay in publication of the final Guidelines also is attributable in part to the Department's effort to develop Guidelines that would (1) ensure that persons with disabilities are afforded the degree of accessibility provided for in the Fair Housing Act, and (2) avoid the imposition of unreasonable requirements on builders.

Comment. Two commenters requested that interim accessibility guidelines should be adopted for projects "caught in the middle", i.e. those projects started before publication of the final Guidelines.

Response. The preamble to the June 15, 1990 proposed guidelines and the August 1, 1990 supplementary notice directly addressed this issue. In both documents, the Department recognized that projects being designed in advance of publication of the Guidelines may not become available for occupancy until after March 13, 1991. The Department advised that efforts to comply with the Option One guidelines, in the design of projects that would be completed before issuance of the final Guidelines, would be considered as evidence of compliance with the Act in connection with the Department's investigation of any complaints. The August 1, 1990 supplementary notice restated the Department's position on compliance with the Act's requirements prior to publication of the final Guidelines, and addressed what "evidence of compliance" will mean in a complaint situation.

Conflict with Historic Preservation Design Codes

Comment. Two commenters expressed concern about a possible conflict between the Act's accessibility requirements and local historic preservation codes (including compatible design requirements). The commenters stated that their particular concerns are: (1) The conversion of warehouse and commercial space to dwelling units; and (2) new housing construction on vacant lots in historically designated neighborhoods.

Response. Existing facilities that are converted to dwelling units are not subject to the Act's accessibility requirements. Additionally, alteration, rehabilitation or repair of covered multifamily dwellings are not subject to the Act's accessibility requirements. The Act's accessibility requirements only apply to new construction. With respect to new construction in neighborhoods subject to historic codes, the Department believes that the Act's accessibility requirements should not conflict with, or preclude building designs compatible with historic preservation codes.

Conflict with Local Accessibility Codes

Comment. Several commenters inquired about the appropriate course of action to follow when confronted with a conflict between the Act's accessibility requirements and local accessibility requirements.

Response. Section 100.205(i) of the Fair Housing regulations implements section 804(f)(8) of the Act, which provides that the Act's accessibility requirements do not supplant or replace State or local laws that impose higher accessibility standards (53 FR 45005). For accessibility standards, as for other code requirements, the governing principle to follow when Federal and State (or local) codes differ is that the more stringent requirement applies.

This principle is equally applicable when multifamily dwellings are subject to more than one Federal law requiring accessibility for persons with physical disabilities. For example, a multifamily dwelling may be subject both to the Fair Housing Amendments Act and to section 504 of the Rehabilitation Act of 1973. Section 504 requires that 5% of units in a covered multifamily dwelling be fully accessible—thus imposing a stricter accessibility standard for those units than would be imposed by the Fair Housing Act. However, compliance only with the section 504 requirements would not satisfy the requirements of the Fair Housing Act. The remaining units in the covered multifamily dwelling would be required to meet the specific accessibility requirements of the Fair Housing Act.

Comment. One commenter, the Seattle Department of Construction and Land Use, presented an example of how a local accessibility code that is more

stringent with respect to some accessibility provisions may interact with the Act's accessibility requirements, where they are more stringent with respect to other provisions. The commenter pointed out that the State of Washington is very hilly, and that the State of Washington's accessibility code requires accessible buildings on sites that would be deemed impractical under the Option One guidelines. The commenter stated that the State of Washington's accessibility code may require installation of a ramp, and that the ramp may then create an accessible entrance for the ground floor, making it subject to the Act's accessibility requirements. The commenter asked that, since the project was not initially subject to the Act's requirements, whether the creation of an accessible ground floor in accordance with the State code provisions would require all units on the ground floor to be made accessible in accordance with the Fair Housing Act. (The State of Washington's accessibility code would require only a percentage of the units to be accessible.)

Response. The answer to the commenter's question is that a nonelevator building with an accessible entrance on an accessible route is required to have the ground floor units designed and constructed in compliance with the Act's accessibility requirements. This response is consistent with the principle that the stricter accessibility requirement applies.

Design Guidelines for Environmental Illness

Comment. Twenty-three (23) commenters advised the Department that many individuals are disabled because of severe allergic reactions to cerrtain chemicals used in construction, and in construction materials. These commenters requested that the Department develop guidelines for constructing or renovating housing that are sensitive to the problems of individuals who suffer from these allergic reactions (commonly referred to as environmental illnesses). These commenters further advised that, as of February 1988, the Social Security Administration lists as a disability "Environmental Illness" (P.O.M.S. Manual No. 24515.065).

Response. The Guidelines developed by the Department are limited to providing guidance relating to the specific accessibility requirements of the Fair Housing Act. As discussed above, under the preamble heading "Bias Toward Wheelchair Users," the Act's requirements primarily are directed to providing housing that is accessible to individuals with mobility impairments. There is no statutory authority for the Department to create the type of design and construction standards suggested by the commenters.

Design Guidelines for the Hearing and Visually-Impaired

Comment. Several commenters stated that the proposed guidelines failed to provide design features for people with hearing and visual impairments. These commenters stated that visual and auditory design features must be included in the final Guidelines.

Response. As noted in the response to the preceding comment, the Department is limited to providing Guidlines for the specific accessibility requirements of the Act. The Act does not require fully accessible individual dwelling units. For individual dwelling units, the Act requires the following: Doors sufficiently wide to allow passage by handicapped persons in wheelchairs; accessible route into and through the dwelling unit; light switches; electrical outlets, thermostats, and other environmental controls in accessible locations; reinforcements in bathroom walls to allow later installation of grab bars; and usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. To specify visual and auditory design features for individual dwelling units would be to recommend standards beyond those necessary for compliance with the Act. Such features were among those identified in Congressional statements discussing modifications that would be made by occupants.

The Act, however, requires public and common use portions of covered multifamily dwellings to be "readily accessible to and usable by handicapped persons." The more comprehensive accessibility requirement for public and common use areas of dwellings necessitates a more comprehensive accessibility standard for these areas. Accordingly, for public and common use areas, the final Guidelines recommend compliance with the appropriate provisions of the ANSI Standard. The ANSI Standard for public and common use areas specifies certain design features to accommodate people with hearing and visual impairments.

Guidelines as Minimum Requirements

Comment. A number of commenters requested that the Department categorize the final Guidelines as minimum requirements, and not as performance standards, because "recommended" guidelines are less effective in achieving the objectives of the Act. Another commenter noted that a safe harbor provision becomes a *de facto* minimum requirement, and that it should therefore be referred to as a minimum requirement.

Response. The Department has not categorized the final Guidelines as either performance standards or minimum requirements. The minimum accessibility requirements are contained in the Act. The Guidelines adopted by the Department provide one way in which a builder or developer may achieve compliance with the Act's accessibility requirements. There are other ways to achieve compliance with the Act's accessibility requirements, as for example, full compliance with ANSI A117.1. Given this fact, it would be inappropriate on the part of the Department to constrain designers by presenting the Fair Housing Accessibility Guidelines as minimum requirements. Builders and developers should be free to use any reasonable design that obtains a result consistent with the Act's requirements. Accordingly, the design specifications presented in the final Guidelines are appropriately referred to as "recommended guidelines".

It is true, however, that compliance with the Fair Housing Accessibility Guidelines will provide builders with a safe harbor. Evidence of compliance with the Fair Housing Accessibility Guidelines adopted by this notice shall be a basis for a determination that there is no reasonable cause to believe that a discriminatory housing practice under section 804(f)(3) has occurred or is about to occur in connection with the investigation of complaints filed with the Department relating to covered multifamily dwellings.

National Accessibility Code

Comment. Several commenters stated that there are too many accessibility codes—ANSI, UFAS, and State and local accessibility codes. These commenters requested that the Department work with the individual States to arrive at one national uniform set of accessibility guidelines.

Response. There is no statutory authority to establish one nationally uniform set of accessibility standards. The Department is in agreement with the commenters' basic theme that increased uniformity in accessibility standards is desirable. In furtherance of this objective, the Department has relied upon the ANSI Standard as the design basis for the Fair Housing Accessibility Guidelines. The Department notes that the ANSI Standard also serves as the design basis for the Uniform Federal

Accessibility Standards (UFAS), the Minimum Guidelines and Requirements for Accessible Design (MGRAD) issued by the U.S. Architectural and Transportation Barriers Compliance Board, and many State and local government accessibility codes.

One Set of Design Standards

Comment. A number of commenters objected to the fact that the proposed guidelines included more than one set of design standards. The commenters stated that the final Guidelines should present only one set of design standards so as not to weaken the Act's accessibility requirements.

Response. The inclusion of options for accessibility design in the proposed guidelines was both to encourage a maximum range of public comment, and to illustrate that there may be several ways to achieve compliance with the Act's accessibility requirements. Congress made clear that compliance with the Act's accessibility standards did not require adherence to a single set of design specifications. In section 804(f)(4) of the Act, the Congress stated that compliance with the appropriate requirements of the ANSI Standard suffices to satisfy the accessibility requirements of the Act. In House Report No. 711, the Congress further stated as follows:

> However this section (section 804(f)(4)) is not intended to require that designers follow this standard exclusively, for there may be other local or State standards with which compliance is required or there may be other creative methods of meeting these standards. (House Report at 27)

Similarly, the Department's Guidelines are not the exclusive standard for compliance with the Act's accessibility requirements. Since the Department's Guidelines are a safe harbor, and not minimum requirements, builders and developers may follow alternative standards that achieve compliance with the Act's accessibility requirements. This policy is consistent with the intent of Congress, which was to encourage creativity and flexibility in meeting the requirements of the Act.

Reliance on Preamble to Guidelines

Comment. One commenter asked whether the explanatory information in the background section of the final Guidelines may be relied upon, and deemed to have the same force and effect as the Guidelines themselves.

Response. The Fair Housing Accessibility Guidelines are—as the name indicates—only guidelines, not regulations or minimum requirements. The Guidelines consist of recommended design specifications for compliance with the specific accessibility requirements of the Fair Housing Act. The final Guidelines provide builders with a safe harbor that, short of specifying all of the provisions of the ANSI Standard, illustrate acceptable methods of compliance with the Act. To the extent that the preamble to the Guidelines provide clarification on certain provisions of the Guidelines, or illustrates additional acceptable methods of compliance with the Act's requirements, the preamble may be relied upon as additional guidance. As noted in the "Summary" portion of this document, the preamble to the Guidelines will be codified in the 1991 edition of the Code of Federal Regulations as Appendix III to the Fair Housing regulations (24 CFR Ch. I, Subch. A, App. III.).

"User Friendly" Guidelines

Comment. A number of commenters criticized the proposed guidelines for being too complicated, too ambiguous, and for requiring reference to a number of different sources. These commenters requested that the final Guidelines be clear, concise and "user friendly". One commenter requested that the final Guidelines use terms that conform to terms used by each of the three major building code organizations: the Building Officials and Code Administrators International, Inc. (BOCA); the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI).

Response. The Department recognizes that the Accessibility Guidelines include several highly technical provisions. In drafting the final Guidelines, the Department has made every effort to explain these provisions as clearly as possible, to use technical and building terms consistent with the terms used by the major building code organizations, to define terms clearly, and to provide additional explanatory information on certain of the provisions of the Guidelines.

2. Section-by-Section Analysis of Final Guidelines

The following presents a section-by-section analysis of the final Guidelines. The text of the final Guidelines is organized into five sections. The first four sections of the Guidelines provide background and explanatory information on the Guidelines. Section 1, the Introduction, describes the purpose, scope and organization of the Guidelines. Section 2 defines relevant terms used. Section 3 reprints the text of 24 CFR 100.205, which implements the Fair Housing Act's accessibility requirements, and Section 4 describes the application of the Guidelines. Section 5, the final section, presents the design specifications recommended by the Department for meeting the Act's accessibility requirements, as codified in 24 CFR 100.205. Section 5 is subdivided into seven areas, to address each of the seven areas of accessible design required by the Act.

The following section-by-section analysis discusses the comments received on each of the sections of the proposed Option One Guidelines, and the Department's response to these comments. Where no discussion of comments is provided under a section heading, no comments were received on this section.

Section 1. Introduction

Section 1, the Introduction, describes the purpose, scope and organization of the Fair Housing Accessibility Guidelines. This section also clarifies that the accessibility guidelines apply only to the design and construction requirements of 24 CFR 100.205, and do not relieve persons participating in a federal or federally-assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157). (The design provisions for those laws are found at 24 CFR Part 8 and 24 CFR Part 40, respectively.) Additionally, section 1 explains that only those sections of the ANSI Standard cited in the Guidelines are required for compliance with the accessibility requirements of the Fair Housing Act. Revisions to section 1 reflect the Department's response to the request of several commenters for further clarification on the purpose and scope of the Guidelines.

Section 2. Definitions

This section incorporates appropriate definitions from § 100.201 of the Department's Fair Housing regulations, and provides additional definitions for terms used in the Guidelines. A number of comments were received on the definitions. Clarifications were made to certain definitions, and additional terms were defined. New terms defined in the final Guidelines include: *adaptable, assistive device, ground floor, loft, multistory dwelling unit, single-story dwelling unit,* and *story.* The inclusion of new definitions reflects the comments received, and also reflects new terms introduced by changes to certain of the Option One design specifications. In several instances, the clarifications of existing definitions, or the new terms

defined, were derived from definitions of certain terms used by one or more of the major building code organizations. Comments on specific definitions are discussed either below or in that portion of the preamble under the particular section heading of the Guidelines in which these terms appear.

Accessible

Comment. A number of commenters stated that the Department used the terms "accessible" and "adaptable" interchangeably, and requested clarification of the meaning of each. The commenters noted that, under several State building codes, these terms denote different standards for compliance. The commenters requested that if the Department intends these two terms to have the same meaning, this should be clearly stated in the final Guidelines, and, if the terms have different meanings, "adaptable" should also be defined.

Response. The Department's use of the terms "adaptable" and "accessible" in the preamble to the proposed guidelines generally reflected Congress' use of the terms in the text of the Act, and in the House and Senate conference reports. However, to respond to commenters' concerns about the distinctions between these terms, the Department has included a definition of "adaptable dwelling units" to clarify the meaning of this term, within the context of the Fair Housing Act. In the final Guidelines, "adaptable dwelling units", when used with respect to covered multifamily dwellings, means dwelling units that include features of adaptable design specified in 24 CFR 100.205(c)(2)–(3).

The Fair Housing Act refers to design features that include both the minimal "accessibility" features required to be built into the unit, and the "adaptable" feature of reinforcement for bathroom walls for the future installation of grab bars. Accordingly, under the Fair Housing Act, an "adaptable dwelling unit" is one that meets the minimal accessibility requirements specified in the Act (i.e., usable doors, an accessible route, accessible environmental controls, and usable kitchens and bathrooms) and the "adaptable" structural feature of reinforced bathroom walls for later installation of grab bars.

Assistive Device

Comment. Several commenters requested that we define the phrase "assistive device."

Response. "Assistive device" means an aid, tool, or instrument used by a person with disabilities to assist in activities of daily living. Examples of assistive devices include tongs, knob turners, and oven rack pusher/pullers. A definition for "assistive device" has been included in the final Guidelines.

Bathroom

In response to the concern of several commenters, the Department has revised the definition of "bathroom" in the final Guidelines to clarify that a bathroom includes a "compartmented" bathroom. A compartmented bathroom is one in which the bathroom fixtures are distributed among interconnected rooms. The fact that bathroom facilities may be located in interconnecting rooms does not exempt this type of bathroom from the Act's accessibility requirements. This clarification, and minor editorial changes, were the only revisions made to the definition of "bathroom". Other comments on this term were as follows:

Comment. Several commenters requested that the Department reconsider its definition of "bathroom", to include powder rooms, i.e., rooms with only a toilet and sink. These commenters stated that persons with disabilities should have access to all bathrooms in their homes, not only full bathrooms. One commenter believed that, unless bathroom was redefined to include single- or two-fixture facilities, some developers will remove a bathtub or shower from a proposed second full bathroom to avoid having to make the second bathroom accessible. The commenter suggested that bathroom be redefined to include any room containing at least two of the possible bathroom fixtures (toilet, sink, bathtub or shower).

Response. In defining "bathroom" to include a water closet (toilet), lavatory (sink), and bathtub or shower, the Department has followed standard dictionary usage, as well as Congressional intent. Congressional statements emphasized that the Act's accessibility requirements were expected to have a minimal effect on the size and design of dwelling units. In a full-size bathroom, this can be achieved. To specify space for wheelchair maneuvering in a powder room would, in most cases, require enlarging the room significantly. However, a powder room would be subject to the Act's accessibility requirements if the powder room is the only toilet facility on the accessible level of a covered multistory dwelling unit. Additionally, it should be noted that doors to powder rooms (regardless of the location of the powder room), like all doors within dwelling units, are required by the Act to be wide enough for wheelchair passage. Some powder rooms may, in fact, be usable by persons in wheelchairs.

Comment. One commenter requested that the final Guidelines provide that a three-quarters bathroom (water closet, lavatory and shower) would not be subject to the accessibility requirements—specifically, the requirement for grab bar reinforcement.

Response. The Fair Housing Act requires reinforcements in bathroom walls to allow for later installation of grab bars at toilet, bathtub or shower, if provided. Accordingly, the Fair Housing regulations specifically require reinforcement in bathroom walls to allow later installation of grab bars around the shower, where showers are provided. (See 24 CFR 100.205(c)(3)(iii).)

Building

Comment. One commenter suggested that the Department use the term "structure" in lieu of "building". The commenter stated that, in the building industry, "building" is defined by exterior walls and fire walls, and that an apartment structure of four units could be subdivided into two separate buildings of two units each by inexpensive construction of a firewall. The commenter suggested that the final definition of "building" include the following language: "For the purpose of the Act, firewall separation does not define buildings."

Response. The term "building" is the term used in the Fair Housing Act. The Department uses this term in the Guidelines to be consistent with the Act. With respect to the comment on firewall separation, the Department believes that, within the context of the Fair Housing Act, the more appropriate place for the language on firewall separation is in the definition of "covered multifamily dwellings". Since many building codes in fact define "building" by exterior walls and firewalls, a definition of "building" in the Fair Housing Accessibility Guidelines that explicitly excludes firewalls as a means of identifying a building would place the Guidelines in conflict with local building codes. Accordingly, to avoid this conflict, the Department has clarified the definition of "covered multifamily dwelling" (which is discussed below) to address the issue of firewall separation.

Covered Multifamily Dwellings

The Department has revised the definition of "covered multifamily dwellings" to clarify that dwelling units within a single structure separated by firewalls do not, for purposes of these Guidelines, constitute separate buildings.

A number of questions and comments were received on what should, or should not, be considered a covered multifamily dwelling. Several of these comments requested clarification concerning "ground floor dwelling units". These comments generally concluded with a request that the Department define "ground floor" and "ground floor unit". The Department has included a definition of "ground floor" in the final Guidelines. The Department believes that this definition is sufficiently clear to identify ground floor units, and that therefore a separate definition for "ground floor unit" is unnecessary. Specific questions concerning ground floor units are discussed below under the heading "Ground Floor". Comments on other covered multifamily dwellings are as follows:

Comment. (Garden apartments) One commenter requested that the Department clarify whether single family attached dwelling units with all living space on one level (i.e. garden units) fall within the definition of covered multifamily dwellings.

Response. The Fair Housing Act and its regulations clearly define "covered multifamily dwellings" as buildings consisting of four or more dwelling units, if such buildings have one or more elevators, and ground floor dwelling units in other buildings consisting of four or more dwelling units. Garden apartments located in an elevator building of four or more units are subject to the Act's requirements. If the garden apartment is on the ground floor of a nonelevator building consisting of four or more apartments, and if all living space is on one level, then the apartment is subject to the Act's requirements (unless the building is exempt on the basis of site impracticality).

Comment. (Townhouses) Several commenters requested clarification concerning whether townhouses are covered multifamily dwellings.

Response. In the preamble to the Fair Housing regulations, the Department addressed this issue. Using an example of a single structure consisting of five two-story townhouses, the Department stated that such a structure is *not* a covered multifamily dwelling if the building does not have an elevator, because the entire dwelling unit is not on the ground floor. Thus, the first floor of a two-story townhouse in the example is not a ground floor unit, because the entire unit is not on the ground floor. In contrast, a structure consisting of five single-story townhouses would be a covered multifamily dwelling. (See 54 FR 3244; 24 CFR Ch. I, Subch. A, App. I at 575–576 (1990).)

Comment. (Units with basements) One commenter asked whether a unit that contains a basement, which provides additional living space, would be viewed as a townhouse, and therefore exempt from the Act's accessibility requirements. The commenter stated that basements are generally designed with the top of the basement, including the basement entrance, above finished grade, and that basement space cannot be made accessible without installation of an elevator or a lengthy ramp.

Response. If the basement is part of the finished living space of a dwelling unit, then the dwelling unit will be treated as a multistory unit, and application of the Act's accessibility requirements will be determined as provided in the Guidelines for Requirement 4. If the basement space is unfinished, then it would not be considered part of the living space of the unit, and the basement would not be subject to the Act's requirements. Attic space would be treated in the same manner.

Dwelling Unit

"Dwelling unit" is defined as a single unit of residence for a household of one or more persons. The definition provides a list of examples of dwelling units in order to clarify the types of units that may be covered by the Fair Housing Act. The examples include condominiums and apartment units in apartment buildings. Several commenters submitted questions on condominiums, and one commenter requested clarification on whether vacation time-sharing units are subject to the Act's requirements. Their specific comments are as follows:

Comment. (Condominiums) A few commenters requested that condominiums be excluded from covered dwelling units because condominiums are comparable to single family homes. The commenter stated that condominiums do not compete in the rental market, but compete in the sale market with single family homes, which are exempt from the Act's requirements.

Response. The Fair Housing Act requires all covered multifamily dwellings for first occupancy after March 13, 1991 to be designed and constructed in accordance with the Act's accessibility requirements. The Act does not distinguish between dwelling units in covered multifamily dwellings that are for sale, and dwelling units that are for rent. Condominium units in covered multifamily dwellings must comply with the Act's accessibility requirements.

Comment. (Custom-designed condominium units) Two commenters stated that purchasers of condominium units often request their units to be custom designed. The commenters questioned whether custom-designed units must comply with the Act's accessibility requirements. Another commenter stated that the Department should exempt from compliance those condominium units which are pre-sold, but not yet constructed, and for which owners have expressly requested designs that are incompatible with the Act's accessibility requirements.

Response. The fact that a condominium unit is sold before the completion of construction does not exempt a developer from compliance with the Act's accessibility requirements. The Act imposes affirmative duties on builders and developers to design and construct covered multifamily dwellings for first occupancy after March 13, 1991 in accordance with the Act's accessibility requirements. These requirements are mandatory for covered multifamily dwellings for first occupancy after March 13, 1991, regardless of the ownership status of covered individual dwelling units. Thus, to the extent that the pre-sale *or* post-sale construction included features that are covered by the Act (such as framing for doors in pre-sale "shell" construction), they should be built accordingly.

Comment. (Vacation timeshare units) One commenter questioned whether vacation timeshare units were subject to the Act's requirements. The commenter stated that a timeshare unit may be owned by 2 to 51 individuals, each of whom owns, or has the right to use, the unit for a proportionate period of time equal to his or her ownership.

Response. Vacation timeshare units are subject to the Act's accessibility requirements, when the units are otherwise subject to the accessibility requirements. "Dwelling" is defined in 24 CFR 100.20 as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof". The preamble to the final Fair Housing rule states that the definition of "dwelling" is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, *and time-*

sharing properties." (Emphasis added.) (See 54 FR 3238, 24 CFR Ch. I, Subch. A, App. I, at 567 (1990).) Accordingly, the fact of vacation timeshare ownership of units in a building does not affect whether the structure is subject to the Act's accessibility requirements.

Entrance

Comment. One commenter requested clarification on whether "entrance" refers to an entry door to a dwelling unit, or an entry door to the building.

Response. As used in the Guidelines, "entrance" refers to an exerior entry door. The definition of "entrance" has been revised in the final Guidelines to clarify this point, and the term "entry" is used instead of "entrance" when referring to the entry into a unit when it is interior to the building.

Ground Floor

As noted above, under the discussion of covered multifamily dwellings, several commenters requested clarification concerning "ground floor" and "ground floor dwelling unit". In response to these comments, the Department has included a definition for "ground floor" in the final Guidelines. The Department has incorporated the definition of "ground floor" found in the Fair Housing regulations (24 CFR 100.201), and has expanded this definition to address specific concerns related to implementation of the Guidelines. In the final Guidelines, "ground floor" is defined as follows:

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

Specific comments concerning ground floor units are as follows:

Comment. (Nonresidential ground floor units) Two commenters advised that, in many urban areas, buildings are constructed without an elevator and with no dwelling units on the ground floor. The ground floor contains either parking, retail shops, restaurants or offices. To bring these buildings into compliance with the Act, one of the commenters recommended that the Department adopt a proposal under consideration by the International Conference of Building Officials (ICBO). The commenter stated that the proposal provides that, in buildings with ground floors occupied by parking and other nonresidential uses, the lowest story containing residential units is considered the ground floor. Another commenter recommended that a building should be exempt from compliance with the Act's requirements if the ground floor is occupied by a non-residential use (including parking). The commenter stated that if an elevator is to be provided to serve the upper residential floors, then the elevator should also serve the ground floor, and access be provided to all the dwelling units.

Response. The Department believes that the definition of "ground floor unit" incorporated in the final Guidelines addresses the concerns of the commenters.

Comment. (More than one ground floor) One commenter requested guidance on treatment of nonelevator garden apartments (i.e., apartment buildings that generally are built on slopes and contain two stories in the front of the building and three stories in the back). The commenter stated that these buildings arguably may be said to have two ground floors. The commenter requested that the Department clarify that, if a building has more than one ground floor, the developer must make one ground floor accessible—but not both—and the developer may choose which floor to make accessible. Another commenter suggested that, in a garden-type apartment building, the floor served by the primary entrance, and which is located at the parking lot level, is the floor which must be made accessible.

Response. In the preamble to the final Fair Housing rule, the Department addressed the issue of buildings with more than one ground floor. (See 54 3244, 24 CFR Ch. I, Subch. A, App. I at 576 (1990).) The Department stated that if a covered building has more than one floor with a building entrance on an accessible route, then the units on each floor with an accessible building entrance must satisfy the Act's accessibility requirements. (See the discussion of townhouses in nonelevator buildings above.)

Handicap

Comment. Several commenters requested that the Department avoid use of the terms "handicap" and "handicapped persons", and replace them with the terms "disability" and "persons with disabilities".

Response. "Handicap" and "handicapped persons" are the terms used by the Fair Housing Act. These terms are used in Guidelines and regulations to be consistent with the statute.

Principle of Reasonableness and Cost

Comment. Four commenters noted that, in the preamble to the proposed guidelines, the Department indicated that the Fair Housing Accessibility Guidelines were limited by a "principle of reasonableness and cost". The commenters requested that the Department define this phrase.

Response. In the preamble to the proposed guidelines, the Department stated in relevant part as follows: "These guidelines are intended to provide a safe harbor for compliance with respect to those issues they cover. * * * Where the ANSI Standard is not applicable, the language of the statute itself is the safest guide. The degree of scoping, accessibility, and the like are of course limited by a principle of reasonableness and cost." (55 FR 24371)

In House Report No. 711, the accessibility requirements of the Fair Housing Act were referred to by the Congress as "modest" (House Report at 25), "minimal" and "basic features of adaptability" (House Report at 25). In developing the Fair Housing Accessibility Guidelines, the Department was attentive to the fact that Congress viewed the Act's accessibility requirements as reasonable, and that the Guidelines for these requirements should conform to this "reasonableness" principle—that is, that the Guidelines should provide the level of reasonable accessibility envisioned by Congress, while maintaining the affordability of new multifamily construction. The Department believes that the final Guidelines conform to this principle of reasonableness and cost.

Slope

Comment. One commenter, the Building Officials & Code Administrators International, Inc. (BOCA), requested clarification of the term, "slope". The commenter stated the definition indicates that slope is calculated based on the distance and elevation between two points. The commenter stated that this is adequate when there is a uniform and reasonably consistent change in elevation between point (i.e., one point is at the top of a hill and the other is at the bottom), but the definition does not adequately address land where a valley, gorge, or swale occurs between two points. The commenter stated that the definition also does not adequately address conditions where there is an abrupt change in the rate of slope between the points (i.e. a sharp drop off within a short distance, with the remaining distance being flat or sloped much more gradually).

Response. Slope is measured from ground level at the entrance to all arrival points within 50 feet, and is

considered impractical only when it exceeds 10 percent between the entrance and all these points. Since multifamily dwellings typically have an arrival point fairly close to the building, a significant change such as a sharp drop would likely result in an impractical slope. Minor variations, such as a swale, if more than 5 percent, would be easily graded or ramped; a gorge would be bridged or filled, in any event, if it was on an entrance route.

Usable Door

Comment. One commenter stated that a clear definition of "usable door" is required.

Response. The Guidelines for Requirement 3 (usable doors) fully describe what is meant by "usable door" within the meaning of the Act.

Section 3. Fair Housing Act Design and Construction Requirements

This section reprints § 100.205 (Design and Construction Requirements) from the Department's final rule implementing the Fair Housing Act. A reprint of § 100.205 was included to provide easy reference to (1) the Act's accessibility requirements, as codified by § 100.205; and (2) the additional examples of methods of compliance with the Act's requirements that are presented in this regulation.

Section 4. Application of the Guidelines

This section states that the design specifications that comprise the final Guidelines apply to all "covered multifamily dwellings" as defined in Section 2 of the Guidelines. Section 4 also clarifies that the Guidelines, are "recommended" for designing dwellings that comply with the requirements of the Fair Housing Amendments Act of 1988.

Under the discussion of Section 4 in the proposed guidelines, the Department requested comment on the Act's application to dwelling units with design features such as a loft or sunken living room (55 FR 24377). A number of comments were received on this issue. Since the Act's application to units with such features is relevant within the context of an accessible route into and through a dwelling unit, the comments and the Department's response to these comments are discussed in section 5, under the subheading, "Guidelines for Requirement 4".

Section 5. Guidelines

The Guidelines contained in this Section 5 are organized to follow the sequence of requirements as they are presented in the Fair Housing Act and in the regulation implementing these requirements, 24 CFR 100.205. There are Guidelines for seven requirements: (1) An accessible entrance on an accessible route; (2) accessible and usable public common use areas; (3) doors usable by a person in a wheelchair; (4) accessible route into and through the covered dwelling unit; (5) light switches, electrical outlets and environmental controls in accessible locations; (6) bathroom walls reinforced for grab bars; and (7) usable kitchens and bathrooms.

For each of these seven requirements, the Department adopted the corresponding Option One guidelines, but changes were made to certain of the Option One design specifications. The following discussion describes the Guidelines for each of the seven requirements, and highlights the changes that have been made.

Guidelines for Requirement 1

The Guidelines for Requirement 1 present guidance on designing an accessible entrance on an accessible route, as required by § 100.205(a), and on determining when an accessible entrance is impractical because of terrain or unusual characteristics of the site.

The Department has adopted the Option One guidelines for Requirement 1, with substantial changes to the specifications for determining site impracticality. These changes, and the guidelines that remain unchanged for Requirement 1 are discussed below.

Site Impracticality Determinations. The Guidelines for Requirement 1 begin by presenting criteria for determining when terrain or unusual site characteristics would make an accessible entrance impractical. Section 100.205(a) recognizes that certain sites may have characteristics that make it impractical to provide an accessible route to a multifamily dwelling. This section states that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site.

Comments. The Department received many comments on the site impracticality specifications presented in the proposed guidelines (55 FR 24377–24378). The majority of the members of the disability community who commented on this issue supported the Option One guidelines, and recommended no change. However, other commenters, including a few disability organizations, members of the building industry, State and local government agencies involved in the development and enforcement of accessibility codes, and some of the major building code organizations, criticized one or more aspects of the Option One and Option Two guidelines for Requirement 1. Specific comments are noted below.

A few commenters suggested that the 10% slope criterion was too low, and easily will be met by a project site having a hilly terrain which could (and typically would) be made more level. These commenters recommended a higher slope criterion ranging anywhere from 12% to 30%. Other commenters stated that the slope criterion for the planned finished grade should not exceed 8.33%. The Congressional sponsors of the Act (U.S. Representatives Edwards, Fish, and Frank) stated that a limited exemption for slopes greater than 10% "was not contemplated by the Act"; but that they believed the Department has the discretion to develop such an exemption if it is "carefully crafted and narrowly tailored".

Several commenters stated that any evaluation of the undisturbed site should be done only on the percentage of land that is buildable. Several commenters stated that the final Guidelines should not require an evaluation of the undisturbed site between the planned entrance and the arrival points—that the only evaluation of the undisturbed site should be the initial threshold slope analysis.

There were a number of questions on arrival points, and requests that these points be more clearly defined. Several commenters presented specific examples of possible problems with the use of arrival points, as specified in the Option One guidelines. A few commenters stated that the individual building analysis should involve a measurement between the entrance and only one designated vehicular or pedestrian arrival point.

Other commenters stated that single buildings on a site should be subject to the same analysis as multiple buildings on a site.

A number of commenters criticized the Option One site impracticality analysis as being too cumbersome and confusing. A number of commenters objected to Option Two's requirement that covered multifamily dwellings with elevators must comply with the Act's accessibility requirements, regardless of site conditions or terrain.

Response. Following careful consideration of these comments, the Department has revised significantly the procedure for determining site impracticality, and its application to covered multifamily dwellings.

For covered multifamily dwellings with elevators, the final Guidelines would not exempt these dwellings from the Act's accessibility requirements. The final Guidelines provide that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route regardless of terrain or unusual characteristics of the site. Every dwelling unit on a floor served by an elevator must be on an accessible route, and must be made accessible in accordance with the Act's requirements for covered dwelling units. The Department has excluded elevator buildings from any exemption from the Act's accessibility requirements because the Department believes that the type of site work that is performed in connection with the construction of a high rise elevator building generally results in a finished grade that would make the building accessible. The Department also notes that the majority of elevator buildings are designed with a primary building entrance and a passenger drop-off area which are easily made accessible to individuals with handicaps. Additionally, many elevator buildings have large, relatively level areas adjacent to the building entrances, which are normally provided for moving vans. These factors lead the Department to conclude that site impracticality considerations should not apply to multifamily elevator buildings.

For covered multifamily dwellings without elevators, the final Guidelines provide two alternative tests for determining site impracticality due to terrain. The first test is an individual building test which involves a two-step process: measurement of the slope of the undisturbed site between the planned entrance and all vehicular or pedestrian arrival points; and measurement of the slope of the planned finished grade between the entrance and all vehicular or pedestrian arrival points. The second test is a site analysis test which involves an analysis of the topography of the existing natural terrain.

A site with a single building, having a common entrance for all units, may be analyzed only under the first test—the individual building test.

All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed either under the first test or the second test. For these sites for which either test is applicable, the final Guidelines provide that regardless of which test is utilized by a builder or developer, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the Act's accessibility requirements.

The distinctive features of the two tests for determining site impracticality due to terrain, for nonelevator multifamily dwellings, are as follows:

1. *The individual building test.*

a. This test is applicable to all sites.

b. This test eliminates the slope analysis of the entire undisturbed site that was applicable only to multiple building sites, and, concomitantly, the table that specifies the minimum percentage of adaptable units required for every multiple building site. The only analysis for site impracticality will be the individual building analysis. This analysis will be applied to each building regardless of the number of buildings on the site.

c. The individual building analysis has been modified to provide for measurement of the slopes between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance. The analysis further provides that if there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, then measurement will be made of the slope between the planned entrance and the closest vehicular or pedestrian arrival point. Additionally, the final Guidelines clarify how to measure the slope between the planned entrance and an arrival point.

d. The individual building analysis retains the evaluation of both the undisturbed site and the planned finished grade. Buildings would be exempt only if the slopes of both the original undisturbed site and the planned finished grade exceed 10 percent (1) as measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or (2) if there are no vehicular or pedestrian arrival points within that 50 foot area, as measured between the planned entrance and the closest vehicular or pedestrian arrival point.

2. *The site analysis test.*

a. This test is only applicable to sites with multiple buildings, or to sites with a single building with multiple entrances.

b. This test involves an analysis of the existing natural terrain (before grading) of the buildable area of the site by topographic survey with 2 foot contour intervals, with slope determination made between each successive contour interval. The accuracy of the slope analysis is to be certified by a professional licensed engineer, landscape architect, architect or surveyor.

c. This test provides that the minimum number of ground floor units to be made accessible on a site must equal the percentage of the total buildable area (excluding floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.

The Department believes that both tests for determining site impracticality due to terrain present enforceable criteria for determining when terrain makes accessibility, as required by the Act, impractical. The Department also believes that by offering a choice of tests, the Department is providing builders and developers with greater flexibility in selecting the approach that is most appropriate, or least burdensome, for their development project, while assuring that accessible units are provided on every site. As noted earlier in this preamble, this policy is consistent with the intent of Congress which was to encourage creativity and flexibility in meeting the Act's requirements, and thus minimize the impact of these requirements on housing affordability.

With respect to determining site impracticality due to unusual characteristics of the site, the test in the final Guidelines is essentially the same as that provided in the Option One guidelines. This test has been modified to limit measurement of the finished grade elevation to that between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance.

Finally, the final Guidelines for Requirement 1 contemplate that the site tests recommended by the Guidelines will be performed, generally, on "normal" soil. The Department solicits additional public comment only on the issue of the feasibility of the site tests on areas that have difficult soil, such as areas where expansive clay or hard granite is prevalent.

Additional specific comments on the site impracticality determination are as follows:

Comment. One commenter stated that the site impracticality determination seems to suggest that only the most direct path from the pedestrian or vehicular arrival points will be used to evaluate the ability to create an accessible route of travel to the building. The commenter stated that it may be possible to use natural or finished contours of the site to provide an accessible route other than a straight-line route.

Response. To be enforceable, the Guidelines must specify where the line is drawn; otherwise it is not possible to

specify what is "practical". Generally, developers provide relatively direct access from the entrance to the pedestrian and vehicular arrival points. If, in fact, the route as built was accessible, then the building would be expected to have an accessible entrance and otherwise comply with the Act.

Comment. Another commenter stated that the site impracticality determination does not take into account the many building types and unit arrangements. The commenter stated that some buildings have a common entrance with unit entrances off a common corridor, while others have individual, exterior entrances to the units. The commenter stated that if the Department is going to permit exemptions from the Act's requirements caused by terrain, the commenter did not understand why every entrance in a building containing individually-accessed apartments must comply with the Act's requirements, simply because they are in one building.

Response. The final Guidelines recognize (as did the proposed guidelines) the difference in building types. If there is a single entry point serving the entire building (or portions thereof), that entry point is considered the "entrance". If each unit has a separate exterior entrance, then each entrance is to be evaluated for the conditions at that entrance. Thus, a building with four entrances, each serving one of four units, might have only one accessible entrance, depending upon site conditions, or it might have any combination up to four.

Comment. Another commenter stated that the evaluation for unusual characteristics of the site only takes into account floodplains or high hazard coastal areas, and excludes other possible unique and unusual site characteristics.

Response. The provision for unusual characteristics of the site clearly provides that floodplains or high hazard coastal areas are only two examples of unusual site characteristics. The provision states that "unusual site characteristics" includes "sites subject to similar requirements of law or code."

Comment. A number of commenters expressed concern that the site impracticality determination of the Guidelines may conflict with local health, safety, environmental or zoning codes. A principal concern of one of the commenters was that the final Guidelines may require "massive grading" of a site in order to achieve compliance with the Act. The commenter was concerned that such grading may conflict with local laws directed at minimizing environmental damage, or with zoning codes that severely limit substantial fill activities at a site.

Response. The Department believes that the site impracticality determination adopted in these final Guidelines will not conflict with local safety, health, environmental or zoning codes. The final Guidelines provide, as did the proposed guidelines, that the site planning involves consideration of all State and local requirements to which a site is subject, such as "density constraints, tree-save or wetlands ordinances and other factors impacting development choices" (55 FR 24378), and explicitly accept the site plan that results from balancing these and other factors affecting the development. The Guidelines would not require, for example, that a site be graded in violation of a tree-save ordinance. If, however, access is required based on the final site plan, then installation of a ramp for access, rather than grading, could be necessary in some cases so as not to disturb the trees. Where access is required, the method of providing access, whether grading or a ramp, will be decided by the developer, based on local ordinances and codes, and on business or aesthetic factors. It should be noted that these nonmandatory Guidelines do not purport to preempt conflicting State or local laws. However, where a State or local law contradicts a specification in the Guidelines, a builder must seek other reasonable cost-effective means, consistent with local law, to assure the accessibility of his or her units. The accessibility requirements of the Fair Housing Act remain applicable, and State and local laws must be in accord with those requirements.

Additional Design Specifications for Requirement 1. In addition to the site impracticality determinations, the final Guidelines for Requirement 1 specify that an accessible entrance on an accessible route is practical when (1) there is an elevator connecting the parking area with any floor on which dwelling units are located, and (2) an elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point, and the planned walkway has a slope no greater than 10 percent. The Guidelines also provide that (i) an accessible entrance that complies with ANSI 4.14, and (2) an accessible route that complies with ANSI 4.3, meets with the accessibility requirements of § 100.205(a). Finally, the Guidelines provide that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers, or legal restrictions, outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route. (These design specifications are unchanged from the proposed Option One guidelines for Requirement 1.)

Comment. Several comments were received on the additional design specifications for Requirement 1. The majority of commenters supported 8.33% as the slope criterion for the finished grade between covered multifamily dwellings and a public or common use facility. A few commenters stated that vehicular access was not an acceptable alternative to pedestrian access. Other commenters stated that the 10% slope criterion for the planned walkway was inconsistent with accessibility requirements that prohibit ramps from having a slope in excess of 8.33%.

Response. With respect to access via a vehicular route, the Department's expectation is that public and common use facilities generally will be on an accessible pedestrian route. The Department, however, recognizes that there may be situations in which an accessible pedestrian route simply is not practical, because of factors beyond the control of the owner. In those situations, vehicular access may be provided. With respect to the 10% slope criterion for planned elevated walkways, this is the criterion for determining whether it is practical to provide an accessible entrance. If the site is determined to be practical, then the slope of the walkway must be reduced to 8.33%.

Guidelines for Requirement 2

The Guidelines for Requirement 2 present design standards that will make public and common use areas readily accessible to and usable by handicapped persons, as required by § 100.205(c)(1).

The Department has adopted the Option One guidelines for Requirement 2, without change. The Guidelines for Requirement 2 identify components of public and common use areas that should be made accessible, reference the section or sections of the ANSI Standard which apply in each case, and describe the appropriate application of the design specifications. In some cases, the Guidelines for Requirement 2 describe variations from the basic ANSI provision that is referenced.

The basic components of public and common use areas covered by the Guidelines include, for example: accessible route(s); protruding objects; ground and floor surface treatments; parking and passenger loading zones;

curb ramps; ramps; stairs; elevator; platform lifts; drinking fountains and water coolers; toilet rooms and bathing facilities, including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks; seating, tables or work surfaces; places of assembly; common-use spaces and facilities, including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors and the like; and laundry rooms.

Specific comments on the Guidelines for Requirement 2 are as follows:

Comment. A number of comments were received on the various components listed in the Guidelines for Requirement 2, and the accessibility specifications for these components provided by both options One and Two. A few commenters, including the Granite State Independent Living Foundation, submitted detailed comments on the design standards for the listed components of public and common use areas, and, in many cases, recommended specifications different than those provided by either Option One or Option Two.

Response. Following careful consideration of the comments submitted on the design specifications of Requirement 2, the Department has decided not to adopt any of the commenters' proposals for change. The Department believes that application of the appropriate ANSI provisions to each of the basic components of public and common use areas, in the manner specified on the Option One chart, and with the limitations and modifications noted, remains the best approach to meeting the requirements of § 100.205(c)(1) for accessible and usable public and common use areas, both because Congress clearly intended that the ANSI Standard be used where appropriate, and because it is consistent with the Department's support for uniform standards to the greatest degree possible.

Comment. Other commenters requested that the ANSI provisions applicable to certain components in public and common use areas also should be applied to these components when they are part of individual dwelling units (for example, floor surface treatments, carpeting, and work surfaces).

Response. To require such application in individual dwelling units would exceed the requirements imposed by the Fair Housing Act. The Fair Housing Act does not require individual dwelling units to be fully accessible and usable by individuals with handicaps. For individual dwelling units, the Act limits its requirements to specific features of accessible design.

Comment. A number of commenters indicated confusion concerning when the ANSI standard was applicable to stairs.

Response. Stairs are subject to the ANSI Standard only when they are located along an accessible route not served by an elevator. (Accessibility between the levels served by the stairs or steps would, under such circumstances, be provided by some other means such as a ramp or lift located with the stairs or steps.) For example, a ground floor entry might have three steps up to an elevator lobby, with a ramp located besides the steps. The steps in this case should meet the ANSI specification since they will be used by people with particular disabilities for whom steps are more usable than ramps.

In nonelevator buildings, stairs serving levels above or below the ground floor are not required to meet the ANSI standard, unless they are a part of an accessible route providing access to public or common use areas located on these levels. For example, mailboxes serving a covered multifamily dwelling in a nonelevator building might be located down three steps from the ground floor level, with a ramp located beside the steps. The steps in this case would be required to meet the ANSI specifications.

Comment. Other commenters indicated confusion concerning when handrails are required. A few commenters stated that the installation of handrails limits access to lawn areas.

Response. Handrails are required only on ramps that are on routes required to be accessible. Handrails are not required on any on-grade walks with slopes no greater than 5%. Only on those walks that exceed 5% slope, and that are parts of the required accessible route, would handrails be required. Accordingly, walks from one building containing dwelling units to another, would not be affected even if slopes exceeded 5%, because the Guidelines do not require such walks as part of the accessible route. The Department believes that the benefits provided to persons with mobility-impairments by the installation of handrails on required assessible routes outweigh any limitations on access to lawn areas.

Comment. A number of proposals for revisions were submitted on the final Guidelines for parking and passenger loading zones.

Response. The Department has not adopted any of these proposals. The Department has retained the applicable provisions of the ANSI Standard for parking space. As noted previously in the preamble, the ANSI Standard is a familiar and widely accepted standard. The Department is reluctant to introduce a new or unfamiliar standard, or to specify parking specifications that exceed the minimal accessibility standards of the Act. However, if a local parking code requires greater accessibility features (e.g. wider aisles) with respect to parking and passenger loading zones, the appropriate provisions of the local code would prevail.

Comment. A number of commenters requested that the final Guidelines for parking specify minimum vertical clearance for garage parking. other commenters suggested that the Department adopt ANSI's vertical height requirement at passenger loading zones as the minimal vertical clearance for garage parking.

Response. No national accessibility standards, including UFAS, require particular vertical clearances in parking garages. The Department did not consider it appropriate to exceed commonly accepted standards by including a minimum vertical clearance in the Fair Housing Accessibility Guidelines, in view of the minimal accessibility requirements of the Fair Housing Act.

Comment. Two commenters stated that parking spaces for condominiums is problematic because the parking spaces are typically deeded in ownership to the unit owner at the time of purchase, and it becomes extremely difficult to arrange for the subsequent provision of accessible parking. one of the commenters recommended that the Guidelines specify that a condominium development have two percent accessible visitor parking, and that these visitor accessible spaces be reassigned to residents with disabilities as needed.

Response. Condominiums subject to the requirements of the Act must provide accessible spaces for two percent of covered units. One approach to the particular situation presented by the commenters would be for condominium documents to include a provision that accessible spaces may be reassigned to residents with disabilities, in exchange for nonaccessible spaces that were initially assigned to units that were later purchased by persons with disabilities.

Comment. Several commenters stated that Option One's requirement of "sufficient accessible facilities" of each type of recreational facility is too vague. The commenters preferred option Two's guidelines on recreational facilities,

which provides that a minimum of 25% (or at least one of each type) of recreational facilities must be accessible.

Response. The Department decided to retain its more flexible approach to recreational facilities. The final Guidelines specify that where multiple recreational facilities are provided, accessibility is met under § 100.205(c)(1) if sufficient accessible facilities of each type are provided.

Comment. Several commenters suggested that all recreational facilities should be made accessible.

Response. To specify that all recreational facilities should be accessible would exceed the requirements of the Act. Congress stated that the Act did not require every feature and aspect of covered multifamily housing to be made accessible to individuals with handicaps. (See House Report at 26.)

Comment. Several commenters submitted detailed specifications on how various recreational facilities could be made accessible. These comments were submitted in response to the Department's request, in the proposed guidelines, for more specific guidance on making recreational facilities accessible to persons with handicaps (55 FR 24376). The Department specifically requested information about ways to provide access into pools.

Response. The Department appreciates all suggestions on recommended specifications for recreational facilities, and, in particular, for swimming pools. For the present, the Department has decided not to change the specifications for recreational facilities, including swimming pools, as provided by the Option One guidelines, since there are no generally accepted standards covering such facilities. Thus, access to the pool area of a swimming facility is expected, but not specialized features for access into the pool (e.g., hoists, or ramps into the water).

Comment. Several commenters criticized the chart in the Option One guidelines, stating that it was confusing and difficult to follow.

Response. The chart is adapted from ANSI's Table 2 pertaining to basic components for accessible sites, facilities and buildings. The ANSI chart is familiar to persons in the building industry. Accordingly, the Option One chart (and now part of the final Guidelines), which is a more limited version of ANSI's Table 2, is not a novel approach.

Guidelines for Requirement 3

The Guidelines for Requirement 3 present design standards for providing doors that will be sufficiently wide to allow passage into and within all premises by handicapped persons in wheelchairs (usable doors) as required by § 100.20(c)(2).

The Department has adopted the Option One guidelines for Requirement 3 with minor editorial changes. No changes were made to the design specifications for "usable doors".

The Guidelines provide separate guidance for (1) doors that are part of an accessible route in the public and common use areas of multifamily dwellings, including entry doors to individual dwelling units; and (2) doors within individual dwelling units.

(1) For public and common use areas and entry doors to dwelling units, doors that comply with ANSI 4.13 would meet the requirements of § 100.205(c)(2).

(2) For doors within individual dwelling units, the Department has retained, in the final Guidelines, the design specification that a door with a clear opening of at least 32 inches nominal width when the door is open 90 degrees, as measured between the face of the door and the stop, would meet the requirements of § 100.205(c)(2).

Specific comments on the design specifications presented in the Guidelines for Requirement 3 are as follows:

Minimum Clear Opening

Comment. The issue of minimum clear opening for doors was one of the most widely commented-upon design features of the guidelines. The majority of commenters representing the disability community supported the Option One specification of a minimum clear opening of 32 inches. A few commenters advocated a wider clear opening. U.S. Representatives Edwards, Frank, and Fish expressed their support for the Option One specification on minimum clearance which is consistent with the ANSI Standard.

Commenters from the building industry were almost unanimous in their opposition to a minimum clear opening of 32 inches. Several builders noted that a 32-inch clear opening requires use of 36-inch doors. These commenters stated that a standard 2'10" door (34") provides only a 31¾ inch clear opening. The commenters therefore recommended amending the Guidelines to permit a "nominal" 32 inch clear space, allowing the use of a 2'10" door, which provides a 31¾ inch clear opening. Other commenters stated that, generally, door width should provide a 32-inch clear opening, but that this width can be reduced if sufficient maneuvering space is provided at the door. These commenters supported Option Two's approach, which provided for clear width to be determined by the clear floor space available for maneuvering on both sides of the door, with the minimum width set at 29¼ inches. (See Option 2 chart and accompanying text at 55 FR 24382.)

Response. The Department considered the recommendations for both wider clear openings, and more narrow clear openings, and decided to maintain the design specification proposed in the Option One guidelines (a clear opening of at least 32 inches nominal width). The clear opening of at least 32 inches nominal width has been the accepted standard for accessibility since the issuance of the original ANSI Standard in 1961. While the Department recognizes that it may be possible to maneuver most wheelchairs through a doorway with a slightly more narrow opening, such doors do not permit ready access on the constant-use basis that is the reality of daily living within a home environment. The Department also recognizes that wider doorways may ensure easier passage for wheelchair users. However, by assuring that the minimum 36-inch hallway and 32-inch clear openings are provided, the Department believes that its recommended opening for doors should accommodate most people with disabilities. In the preamble to the proposed guidelines, the Department stated that the clear width provided by a standard 34-inch door would be acceptable under the Guidelines.

Maneuvering Space at Doors

Comment. Several commenters requested that the final Guidelines incorporate minimum maneuvering clearances at doors, as provided by the ANSI Standard. These commenters stated that maneuvering space on the latch side of the door is as important a feature as mininum door width. Other commenters stated that the maneuvering space was necessary to ensure safe egress in cases of emergency.

Response. The Department has carefully considered these comments, and has declined to adopt this approach. The Department believes that, by adhering to the standard 32-inch clear opening, it is possible to forego other accessibility requirements related to doors (e.g. door closing forces, maneuvering clearances, and hardware) without compromising the Congressional directive requiring doors to be "sufficiently wide to allow passage by handicapped persons in wheelchairs." However, as the Department noted in the preamble to the proposed guidelines, approaches to, and

maneuvering spaces at, the exterior side of the entrance door to an individual dwelling unit would be considered part of the public spaces, and therefore would be subject to the appropriate ANSI provisions. (See 55 FR 24380.)

Doors in a Series

Comment. A few commenters expressed concern that the Guidelines did not provide design specification for an entrance that consists of a series of more than one door. The commenters were concerned that, without adequate guidance, a disabled resident or tenant could be trapped between doors.

Response. Doors in a series are not typically part of an individual dwelling unit. Doors in a series generally are used in the entries to buildings, and are therefore part of public spaces. Section 4.13 of the ANSI Standard, which is applicable to doors in public and common use areas, provides design specifications for doors in a series. However, where doors in a series *are* provided as part of a dwelling unit, the Department notes that the requirements of an accessible route into and through the dwelling unit would apply.

Door Hardware

Comment. A few commenters requested that lever hardware be required on doors throughout dwelling units, not only at the entry door to the dwelling unit.

Response. For doors within individual dwelling units, the Fair Housing Act only requires that the doors be sufficiently wide to allow passage by handicapped persons in wheelchairs. Lever hardware is required for entry doors to the building and to individual dwelling units because these doors are part of the public and common use areas, and are, therefore, subject to the ANSI provisions for public and common use areas, which specify lever hardware. Installing lever hardware on doors is the type of adaptation that individual residents can make easily. The ANSI standard also recognizes this point. Under the ANSI Standard, only the entry door into an accessible dwelling unit is required to comply with the requirements for door hardware. (See ANSI section 4.13.9.)

Multiple Usable Entrances

Comment. Several commenters noted that the Guidelines do not provide more than one accessible entrance/exit, and that without a second means of egress, wheelchair users may find themselves in danger in an emergency situation.

Response. As stated previously, the Department is limited to providing Guidelines that are consistent with the accessibility requirements of the Act. The Act requires "an accessible entrance", rather than requiring all entrances to be accessible. However, the requirements for usable doors and an accessible route to exterior spaces such as balconies and decks does respond to this concern.

Guidelines for Requirement 4

The Guidelines for Requirement 4 present design specifications for providing an accessible route into and through the covered dwelling unit, as required by § 100.205(c)(3)(i).

The Department has adopted the Option One guidelines for Requirement 4 with the following changes:

First, the Department has eliminated the specification for maneuvering space if a person in a wheelchair must make a T-turn.

Second, the Department has eliminated the specification for a minimum clear headroom of 80 inches.

Third, and most significantly, the Department has revised the design specifications for "changes in level" within a dwelling unit to include separate design specifications for: (a) single-story dwelling units, including single-story dwelling units with design features such as a loft or a sunken living room; and (b) multistory dwelling units in buildings with elevators.

Fourth, the Department has revised the specifications for changes in level at exterior patios, decks or balconies in certain circumstances, to minimize water damage. For the same reason, the final Guidelines also include separate specifications for changes in level at the primary entry doors of dwelling units in certain circumstances.

Specific comments on the Guidelines for Requirement 4, and the rationale for the changes made, are discussed below.

Minimum Clear Corridor Width

A few commenters from the disability community advocated a minimum clear corridor width of 48 inches. However, the majority of commenters on this issue had no objection to the minimum clear corridor width of 36 inches. The 36-inch minimum clear corridor width, which has been retained, is consistent with the ANSI Standard.

T-turn Maneuvering Space

Comment. Several commenters stated that this design specification was unclear in two respects. First, they stated that it was unclear when it is necessary for a designer to provide space for a T-turn. The commenters stated that it was difficult to envision circumstances where a wheelchair could be pulled into a position traveling forward and then not be capable of backing out. Second, the commenters stated that the two descriptions of the T-turn provided by the Department were contradictory. The commenters stated that the preamble to the proposed guidelines provided one description of the T-turn (55 FR 24380), while Figure 2 of the guideline 4 (55 FR 24392), presented a different description of the T-turn.

Response. The Department has decided to delete the reference to the T-turn dimensions in the Guidelines for Requirement 4. The Guidelines adequately address the accessible route into and through the dwelling unit by the minimum corridor width and door width specifications, given typical apartment layouts. Should a designer find that a unique layout in a particular unit made a T-turn necessary for a wheelchair user, the specifications provided in the ANSI Standard sections referenced for public and common use areas could be used.

Minimum Clear Headroom

Comment. Several commenters from the building industry objected to the specification for a minimum clear headroom of 80 inches. The commenters stated that standard doors provide a height range from 75 to 79 inches, and that an 80-inch specification would considerably increase the cost of each door installed.

Response. The specification for minimum clear headroom of 80 inches was included in the proposed guidelines because it is a specification included in the major accessibility codes. This design specification was not expected to conflict with typical door heights. However, since the principal purpose of the requirement is to restrict obstructions such as overhanging signs in public walkways, the Department has determined that this specification is not needed for accessible routes within individual dwellings units, and has therefore deleted this standard from the final Guidelines for such routes. (The requirement, however, still applies in public and common use spaces.)

Changes in Level within a Dwelling Unit

In the preamble to the proposed guidelines, the Department advised that the Act appears to require that dwelling units with design features such as lofts or with more than one floor in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to the upper levels (55 FR 24377). The Department stated that, although it is not clear that Congress intended this result, the Department's preliminary assessment was that the statute appears

to offer little flexibility in this regard. The Department noted that several commenters, including the NAHB and the NCCSCI, suggested that units with more than one floor in elevator buildings should be required to comply with the Act's accessibility requirements only on the floor that is served by the building elevator. (This was the position taken by Option Two.) The Department solicited comments on this issue, and received a number of responses opposing the Department's interpretation.

Comment. The commenters opposing the Department's interpretation stated that the Department's interpretation would place an undue burden on developers and needlessly increase housing costs for everyone; defeat the purpose of having multilevel units, which is to provide additional space at a lower cost; eliminate multilevel designs which may be desirable to disabled residents (e.g., to provide living accommodations for live-in attendants); and "create a backlash" against the Accessibility Guidelines.

Response. Following careful consideration of these comments, and a reexamination of the Act and its legislative history, the Department has determined that its previous interpretation of the Act's application to units with changes in level (whether lofts, or additional stories in elevator buildings), which would have required installation of chair lifts or internal elevators in such units, runs contrary to the purpose and intent of the Fair Housing Act, which is to place "modest accessibility requirements on covered multifamily dwellings." (See House Report at 25.)

In House Report No. 711, the Congress repeatedly emphasized that the accessibility requirements of the Fair Housing Act were minimal basic requirements of accessibility.

> These modest requirements will be incorporated into the design of new buildings, resulting in features which do not look unusual and will not add significant additional costs. The bill does not require the installation of elevators or 'hospital-like' features, or the renovation of existing units." (House Report at 18)
>
> Accessibility requirements can vary across a wide range. A standard of total accessibility would require that every entrance, doorway, bathroom, parking space, and portion of buildings and grounds be accessible. Many designers and builders have interpreted the term 'accessible' to mean this type of standard. The committee does not intend to impose such a standard. Rather, the committee intends to use a standard of 'adaptable' design, a standard developed in recent years by the building industry and by advocates for handicapped individuals to provide usable housing for handicapped persons without necessarily being significantly different from conventional housing." (House Report at 26)

The Department has determined that a requirement that units with lofts or multiple stories in elevator buildings be equipped with internal elevators, chair lifts, or other means of access to lofts or upper stories would make accessible housing under the Fair Housing Act significantly different from conventional housing, and would be inconsistent with the Act's "modest accessibility requirements". (See House Report at 25.)

The Department also has determined that a requirement that dwelling units with design features, such as sunken living rooms, must provide some means of access, such as ramps or lifts, as submitted in the proposed guidelines (55 FR 24380) is inconsistent with the Act's modest accessibility requirements. Sunken living rooms are not an uncommon design feature. To require a ramp or other means of access to such an area, at the time of construction, would reduce, perhaps significantly, the space provided by the area. The reduced space might interfere with the use and enjoyment of this area by a resident who is not disabled, or whose disability does not require access by means of a ramp or lift. The Department believes that had it maintained in the final Guidelines the access specifications for design features, such as sunken living rooms, as set forth in the proposed guidelines, the final Guidelines would have interfered unduly with a developer's choice of design, or would have eliminated a popular design choice. Accordingly, the final Guidelines provide that access is not required to design features, such as a sunken living room, provided that the area does not have the effect of interrupting the accessible route through the remainder of the unit.

The Department believes that the installation of a ramp or deck in order to make a sunken room accessible is the type of later adaptation that easily can be made by a tenant. The Department, however, does require that design features, such as a split-level entry, which is critical to providing an accessible route into and through the unit, must provide a ramp or other means of access to the accessible route.

In order to comply with the Act's requirement of an accessible route into and through covered dwelling units, the Department has revised the Guidelines for Requirement 4 to provide separate technical guidance for two types of dwelling units: (1) Single-story dwelling units, including single-story dwelling units with design features such as a loft or a sunken living room; and (2) multistory dwelling units in elevator buildings. (Definitions for "single-story dwelling unit," "loft," "multistory dwelling unit" and "story" have been included in section 2 of the final Guidelines.)

"Single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor.

"Loft" is defined as an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" is defined as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it.

"Story" is defined as that portion of a dwelling unit between the upper surface of any floor and the upper surface of the floor next above, or the roof of the unit. Within the context of dwelling units, the terms "story" and "floor" are synonymous.

For single-story dwelling units and multistory dwelling units, the Guidelines for Requirement 4 are as follows:

(1) For single-story dwelling units, the design specifications for changes in level, are the same as proposed in the Option One guidelines. Changes in level within the dwelling unit with heights between ¼ inch and ½ inch are beveled with a slope no greater than 1:2. Changes in level greater than ½ inch (excluding changes in level resulting from design features such as a loft or a sunken living room) must be ramped or must provide other means of access. For example, split-level entries must be ramped or use other means of providing and accessible route into and through the dwelling unit.

For single-story dwelling units with design features such as a loft or a raised or sunken functional area, such as a sunken living room, the Guidelines specify that: (a) access to lofts is not required, provided that all spaces other than the loft are on an accessible route; and (b) design features such as a sunken living room are also exempt from the access specifications, provided that the sunken area does not interrupt the accessible route through the remainder of the unit.

(2) In multistory dwelling units in buildings with elevators, access to the additional story, or stories, is not required, provided that the story of the unit that is served by the building elevator (a) is the primary entry to the unit; (b) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible level; and (3) contains a bathroom or powder room which complies with Requirement

7. (As previously noted, multistory units in buildings without elevators are not considered ground floor units, and therefore are exempt.)

The Department believes that the foregoing revisions to the Guidelines for Requirement 4 will provide individuals with handicaps the degree of accessibility intended by the Fair Housing Act, without increasing significantly the cost of multifamily housing.

Comment. Two commenters suggested that the same adaptability requirement that is applied to bathrooms should be applied to dwelling units with more than one story, or with lofts, i.e. that stairs, and the wall along the stairs, contain the appropriate reinforcement to provide for later installation of a wheelchair lift by a disabled resident, if so desired.

Response. The only blocking or wall reinforcement required by the Fair Housing Act is the reinforcement in bathroom walls for later installation of grab bars. As noted earlier in this preamble, the Fair Housing Act does not actually require that features in covered units be "adaptable", except for bathrooms. The adaptable feature is the reinforcement in bathroom walls which allows later installation of grab bars. Accordingly, the Department believes that a specification for reinforcement of the walls along stairs would exceed the Act's requirements, because the necessary reinforcement could vary by type of lift chosen, and more appropriately would be specified and installed as part of the installation of the lift.

Thresholds at Exterior Doors/ Thresholds to Balconies or Decks

Comment. A number of commenters from the building industry objected to the provision of the Option One guidelines that specified that an exterior deck, balcony, patio, or similar surface may be no more than ¾ inch below the adjacent threshold. Several commenters stated that, in many situations, this height is unworkable for balconies and decks because of waterproofing and safety concerns. This was a particular concern among commenters from the South Florida building industry, who stated that the ¾" height is ineffective for upper floors of high rise buildings in a coastal environment and invites water control problems. Others noted that the suggestion of a wooden decking insert, or the specification of a ¾ inch maximum change in level, in general, might conflict with fire codes.

Response. In response to these concerns, and mindful that Congress did not intend the accessibility requirements of the Act to override the need to protect the physical integrity of multifamily housing, the Department has included two additional provisions for changes in level at thresholds leading to certain exterior surfaces, as a protective measure against possible water damage. The final Guidelines provide that exterior deck, patio or balcony surfaces should be no more than ½ inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface should be no more than 4 inches below the floor level of the interior dwelling unit, unless the local code requires a lower drop. Additionally, the final Guidelines provide that at the primary entry doors to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick, or flagstone should be no more than ½ inch below the floor level of the interior of the dwelling unit. The Guidelines further provide that the finished surface of this area, located immediately outside the entry door, may be sloped for drainage, but the sloping may be no more than ⅛ inch per foot.

In response to commenters' concern that the Guidelines for an accessible route to balconies and decks may conflict with certain building codes that require higher thresholds, or balconies or decks lower than the ¾ inch specified by the Guidelines, the Department notes that the Guidelines are "recommended" design specifications, not building code "requirements". Accordingly, the Guidelines cannot preempt State or local law. However, the builder confronted with local requirements that thwart the particular means of providing accessibility suggested by the Guidelines is under a duty to take reasonable steps to provide for accessibility by other means consistent with local law constraints and considerations of cost-effectiveness, in order to provide dwelling units that meet the specific accessibility requirements of the Fair Housing Act.

Guidelines for Requirement 5

The Guidelines for Requirement 5 present design specifications for providing dwelling units that contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations, as required by § 100.205(c)(2)(ii).

The Department has adopted the Option One guidelines for Requirement 5 with minor technical changes. The final Guidelines clarify that to be in an accessible location within the meaning of the Act, the maximum height for an environmental control, for which reach is over an obstruction, is 44 inches for forward approach (as was proposed in the Option One guidelines), or 46 inches for side approach, provided that the obstruction is no more than 24 inches in depth. The inclusion of this additional specification for side approach is consistent with the comparable provisions in the ANSI standard.

Specific comments on the Guidelines for Requirement 5 are as follows:

Comments. Three comments stated that lowered thermostats could pose a safety hazard for children. However, the majority of comments requested clarification as to what is meant by "other environmental controls". Several commenters from the disability community requested that circuit breakers be categorized as environmental controls. Other commenters asked whether light and fan switches on range hoods fall within the category of light switches and environmental controls.

Response. With regard to concerns about lowered thermostats, the Act specifically identifies "thermostats" as one of the controls that must be in accessible locations, and the mounting heights specified in the Guidelines are necessary for an accessible location. The only other environmental controls covered by the Guidelines for Requirement 5 would be heating, air conditioning or ventilation controls (e.g., ceiling fan controls). The Department interprets the Act's requirement of placing environmental controls in accessible locations as referring to those environmental controls that are used by residents or tenants on a daily or regular basis. Circuit breakers do not fall into this category, and therefore are not subject to accessible location specifications. Light and fan switches on range hoods are appliance controls and therefore are not covered by the Act.

Comment. Other commenters asked whether light switches and electrical outlets in the inside corners of kitchen counter areas, and floor outlets are permissible.

Response. Light switches and electrical outlets in the inside corners of kitchen counters, and floor outlets, are permissible, if they are not the only light switches and electrical outlets provided for the area.

Comment. Another commenter pointed out that some electrical outlets that are installed specifically to serve individual appliances, such as refrigerators or microwave ovens, cannot realistically be mounted in an accessible location.

Response. Electrical outlets installed to serve individual appliances, such as refrigerators or built-in microwave ovens, may be mounted in non-accessible locations. These are not the type of electrical outlets which a disabled resident or tenant would need access to on a regular or frequent basis.

Comment. One commenter stated that Figure 3 in the proposed guidelines (Figure 2 in the final Guidelines) specifies a reach requirement more stringent than the ANSI Standard.

Response. The ANSI Standard presents reach ranges for both forward and side approaches for two situations: (1) unobstructed; and (2) over an obstruction. The proposed guidelines specified only the heights for forward reach, because those heights also are usable in side approach. The diagram in Figure 2 (formerly Figure 3) showing forward reach is identical to that of Figure 5 in the ANSI Standard. The ANSI Standard also includes a figure (Figure 6) for side reach that permits higher placement. The reach range for forward approach was the only one referenced in the proposed guidelines for use in the dwelling unit, because it was considered simpler and easier to use a single specification that would work in all situations. The reach range for forward approach has been retained in the final Guidelines for situations where there is no built-in obstruction in order to assure usability when the unit was furnished. However, the final Guidelines have added the specification for side reach over a built-in obstruction that is consistent with the ANSI requirement, and that permits placement two inches higher than forward reach.

Guidelines for Requirement 6

The Guidelines for Requirement 6 present design standards for installation of reinforcement in bathroom walls to allow for later installation of grab bars around the toilet, tub, shower stall and shower seat where such facilities are provided, as required by § 100.205(c)(3)(iii).

The Department adopted the Option One guidelines for Requirement 6 with two modifications. First, the final Guidelines provide that a powder room is subject to the requirement for reinforced walls for grab bars when the powder room is the only toilet facility located on the accessible level of a covered multistory dwelling unit. Second, the final Guidelines further clarify that reinforced bathroom walls will meet the accessibility requirement of § 100.205(c)(3)(iii), if reinforced areas are provided at least at those points where grab bars will be mounted.

Specific comments on this guideline were as follows:

Comment. A number of commenters requested that the Department specify the dimensions for grab bar reinforcement, and suggested that grab bar reinforcing material run horizontally throughout the entire length of the space given for grab bars, as provided by the ANSI Standard. These commenters stated that if this type of reinforcement was required, residents could locate more easily the studs for future grab bar installation, and have flexibility in the placement of grab bars for optimal use, and safety in bathrooms. One commenter noted that many grab bars are of such a length that they require an intermediate fastener, but the proposed standard does not permit intermediate fastening. Two commenters recommended that the final Guidelines follow ANSI and UFAS Standards for requirements for mounting grab bars. One commenter recommended the installation of panels of plywood behind bathroom walls because this would provide greater flexibility in the installation of grab bars.

Response. The illustrations of grab bar wall reinforcement accompanying the Guidelines for Requirement 6 are intended only to show where reinforcement for grab bars is needed. The illustrations are not intended to prescribe how the reinforcing should be provided, or that the bathtub or shower is required to be surrounded by three walls of reinforcement. The additional language added to the Guidelines is to clarify that the Act's accessibility requirement for grab bar reinforcement is met if reinforced areas are provided, at a minimum, at those points where grab bars will be mounted. The Department recognizes that reinforcing for grab bars may be accomplished in a variety of ways, such as by providing plywood panels in the areas illustrated, or by installing vertical reinforcement (in the form of double studs, for example) at the points noted on the figures accompanying the Guidelines.

Comment. Several commenters stated that the final Guidelines should incorporate Option Two's specification of reinforcement for shower seats when shower stalls are provided.

Response. The Fair Housing Act only requires reinforcement for later installation of grab bars. The Act does not cover reinforcement for shower seats; rather, it mentions shower seats (if provided) as an area where grab bar reinforcement would be needed. However, as will be discussed more fully in the following section concerning the Guidelines for Requirement 7 (Usable Bathrooms), reinforcement for shower seats would provide adaptability to increase usability of shower stalls, and is a design option available to builders and developers in designing "usable" bathrooms.

Comment. One commenter recommended that the final Guidelines incorporate Option Two's specification that prefabricated tub/shower enclosures would have to be fabricated with reinforcement for grab bar enclosures.

Response. The Department did not incorporate this specification in the final Guidelines. The Department believes that it is inappropriate to specify product design. A builder should have the flexibility to choose how reinforcement for grab bars will be provided.

Comment. Two commenters stated that half-baths should also contain grab-bar reinforcements.

Response. Half-baths are not considered "bathrooms", as this term is commonly used, and, therefore are not subject to the bathroom wall reinforcement requirement, unless a half-bath facility is the only restroom facility on the accessible level of a covered multistory dwelling unit.

Comment. One commenter requested that the final Guidelines incorporate language clearly to specify that the builder's responsibility is limited solely to wall reinforcement, and later installation is the responsibility of the resident or tenant.

Response. It is unnecessary to incorporate the suggested language in the final Guidelines. The Guidelines for Requirement 6 are solely directed to reinforcement. No guidelines are provided for the actual installation of grab bars. Accordingly, there should be no confusion on this issue.

Guidelines for Requirement 7

The Guidelines for Requirement 7 present design specifications for providing usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, as required by § 100.205(c)(3)(iv).

For usable kitchens, the Department adopted the Option One guidelines with one change. The Department has eliminated the specification that controls for ranges and cooktops be placed so that reaching across burners is not required.

For usable bathrooms, the final Guidelines provide two alternative sets of design specifications. The Fair Housing Act requires that an accessible or "usable" bathroom is one which provides sufficient space for an

individual in a wheelchair to maneuver about. The two sets of specifications provide different approaches as to how compliance with this maneuvering space requirement may be accomplished. The first set of specifications also includes size dimensions for shower stalls, but only when a shower stall is the only bathing facility provided in a dwelling unit. Additionally, either set of specifications is applicable to powder rooms, when a powder room is the only restroom facility on the accessible level of a covered multistory dwelling unit.

With the exception of the inclusion of shower stall dimensions, the first set of "usable bathroom" specifications remain the same as the Option One guidelines for usable bathrooms. The second set of "usable bathroom" specifications provide somewhat greater accessibility than the first set, but would be applicable only to one bathroom in a dwelling unit that has two or more bathrooms. The second set of specifications include clear space specifications for bathrooms with in-swinging doors and for bathrooms with outswinging doors. This second set of specifications also provides that toilets must be located in a manner that permits a grab bar to be installed on one side of the fixture, and provides specifications on the installation of vanities and lavatories.

To meet the Act's requirements for usable bathrooms, the final Guidelines provide that (1) in a dwelling unit with a single bathroom, either set of specifications may be used; and (2) in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or, alternatively, at least one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. However, in multistory dwelling units, only those bathrooms on the accessible level are subject to the Act's requirements for usable bathrooms. Where a powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit, the powder room must meet either the first set of specifications or the second set of specifications. All bathrooms and powder rooms that are subject to Requirement 7, must have reinforcements for grab bars as provided in the Guideline for Requirement 6.

In developing the final Guidelines for the usable bathroom requirement, the Department recognized that the Option One guidelines for usable bathrooms presented the minimum specifications necessary to meet the Act's requirements. Accordingly, the Department believes that it is appropriate to provide a second set of specifications which provide somewhat different accessibility accommodations than the Option One guidelines. The Department believes that by offering two sets of specifications for usable bathrooms, the Department is providing builders and developers with more development choices in designing dwelling units that contain more than one bathroom; and it is providing individuals and families with more housing options. Builders and developers may design all bathrooms to meet the minimal specifications of the first set of specifications, or they may design only one bathroom to meet the somewhat greater accessibility specifications of the second set. Regardless of which set of usable bathroom specifications is selected by a builder or developer, all doors to bathrooms and powder rooms must meet the minimum door width specifications of Requirement 3.

The following presents a discussion of the specific comments received on usable kitchens and usable bathrooms.

Controls for Ranges and Cooktops

Comment. A few commenters stated that the Department lacks authority under the Fair Housing Act to impose design standards on appliances. The commenter stated that standards that specify certain design features for appliances in individual dwelling units exceed the scope of the Department's statutory authority. Other commenters objected to front range controls as a safety hazard for children. Commenters from the disability community were strongly supportive of this design specification.

Response. With respect to usable kitchens, the Act solely requires that kitchens have sufficient space such that an individual in a wheelchair can maneuver about. Accordingly, a specification that controls for ranges and cooktops be placed so that they can be used without reaching across burners is not consistent with the Act's requirement for usable kitchens.

In the proposed guidelines, the Option One guidelines for usable kitchens specified that controls should be located so as to be usable without reaching across burners. As the preamble to the proposed guidelines noted, many standard styles of ranges and cooktops meeting this specification (other than those with front controls) are available on the market. However, in reviewing the entire rulemaking history on the design and constructions requirements, the Department has concluded that the requirements of the Fair Housing Act did not cover any appliance controls. Accordingly, this specification was not included in the final Guidelines.

Maneuverinq Space, Adjustable Cabinetry, Fixtures and Plumbing

Comment. A number of commenters from the disability community stated that it was important that the Guidelines for both kitchens and bathrooms specify a five-foot turning radius; adjustable cabinetry, fixtures and plumbing; and fixture controls that comply with the appropriate provisions of the ANSI Standard.

Response. The legislative history of the Fair Housing Act clearly indicates that Congress did not envision usable kitchens and bathrooms to be designed in accordance with the specifications suggested by the commenters. In House Report No. 711, the Congress stated as follows:

> The fourth feature is that kitchens and bathrooms be usable such that an individual in a wheelchair can maneuver about the space. This provision is carefully worded to provide a living environment usable by all. Design of standard sized kitchens and bathrooms can be done in such a way as to assure usability by persons with disabilities without necessarily increasing the size of space. The Committee intends that such space be usable by handicapped persons, but this does not necessarily require that a turning radius be provided in every situation. This provision also does not require that fixtures, cabinetry or plumbing be of such design as to be adjustable. (House Report at 27)

Accordingly, the Department is unable to adopt any of the proposals suggested by the commenters. The Act's requirement for usable kitchens and bathrooms only specifies maneuverability for wheelchair users, and this maneuverability does not require the specification advocated by the commenters. (See previous discussion of this issue in the preamble to the proposed Fair Housing regulations at 53 FR 45005.)

Comment. Two commenters requested clarification concerning what is meant by "sufficient maneuvering space". One of the commenters recommended that this term be defined to include "such space as shall permit a person in a wheelchair to use the features and appliances of a room without having to leave the room to obtain an approach to an appliance, work surface, or cabinet".

Response. The Guidelines for Requirement 7 (usable kitchens and bathrooms) describe what constitutes sufficient maneuvering space in the

kitchen and the bathroom. Additionally, the preamble to the proposed guidelines explicitly states that sufficient maneuvering space for kitchens does not require a wheelchair turning radius (55 FR 24381). As noted in response to the preceding comment, a wheelchair turning radius also is not required for either usable kitchens or usable bathrooms. The Guidelines for usable bathroom state that sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other assistive device to enter and close the door, use the fixtures, reopen the door and exit. This specification was not changed in the final Guidelines.

Kitchen Work Surfaces

Comment. One commenter stated that "Element 12" in the chart accompanying the Guidelines for Requirement 2 (public and common use areas) seems to require a portion of the kitchen counters to be accessible since they are work surfaces. This commenter stated that if this interpretation is correct then it should be made clear in the Guidelines.

Response. The commenter's interpretation is not correct. The chart accompanying the Guidelines for Requirement 2 is only applicable to the public and common use areas, not to individual dwelling units.

Showers

Comments. Several commenters requested that the final Guidelines provide dimensions on the appropriate width and height of showers and shower doors. Another commenter asked whether showers were required to comply with dimensions specified by the ANSI Standard.

Response. The final Guidelines for usable bathrooms (the first set of specifications) specify size dimensions for shower stalls in only one situation—when the shower stall is the only bathing facility provided in a covered dwelling unit. The Department believes that, where a shower stall is the only bathing facility provided, size specification for the shower stall is consistent with the Act's requirement for usable bathrooms. However, if a shower stall is not the only bathing facility provided in the dwelling unit, then the only specification for showers, appropriate under the Act, concerns reinforced walls in showers. (The titles under the illustrations (figures) related to showers in the final Guidelines for Requirement 6 have been revised to make it clear that the figures are specifying only the different areas required to be reinforced in showers of different sizes, not the required sizes of the shower stalls.)

In-swinging Bathroom Doors

Comment. One commenter stated that in-swinging bathroom doors generally are problematic, unless the bathroom is unusually large. The commenter noted that an in-swinging door makes it extremely difficult to enter and exit. The commenter recommended that in-swinging doors be prohibited unless there is sufficient internal bathroom space, exclusive of the swing of the door, which allows either a five foot turning radius or two mutually exclusive 30" x 48" wheelchair spaces. Another commenter stated that in-swinging bathroom doors create a serious obstacle for the wheelchair user.

Response. The Department declines to prohibit in-swinging bathroom doors. Adjusting an in-swinging door to swing out is the type of later adaptation that can be made fairly easily by a resident or tenant. Once a minimum door width is provided, a tenant who finds a bathroom not readily usable can have the door rehung as an outswinging door. Note, however, that the second set of guidelines for usable bathrooms specifies clear space for bathrooms with in-swinging doors.

Bathroom Design Illustrations

Comment. A number of commenters from the disability community stated that two of the six bathroom drawings in the preamble to the proposed guidelines (numbers 4 and 6 at 55 FR 24374–24375) did not allow for a parallel approach to the tub. These commenters requested that these drawings be removed from the final Guidelines. Other commenters stated that the Department's bathroom design illustrations at 55 FR 24374–24375 are not consistent with the Figure 8 bathroom design illustrations at 55 FR 24401.

Response. While a parallel approach to the tub would provide somewhat greater accessibility, the Department believes that to indicate, through the Guidelines, that a parallel approach to the tub is necessary to meet the Act's requirements, exceeds the Fair Housing Act's minimal design expectations for bathrooms. Accordingly, the first set of specifications for usable bathrooms does not specify a parallel approach to the tub. However, the second set of specifications provides for a clear access aisle adjacent to the tub that would permit a parallel approach to the tub. Either method would meet the Act's requirements. With respect to the comments on the bathroom design illustrations, these illustrations have been revised to make the clear floor space requirements more readily understood. The illustrations are adapted from ANSI A117.1.

Number of Accessible Bathrooms

Comment. A number of comments were received on how many bathrooms in a dwelling unit should be subject to the Act's "usable" bathroom requirement. Many commenters recommended that all full bathrooms be made accessible. Other commenters recommended that only one full bathroom be required to be made accessible. A few commenters recommended that half-baths/powder rooms also be subject to the Act's requirement.

Response. In House Report No. 711, the Congress distinguished between "total accessibility" and the level of accessibility required by the Fair Housing Act. The report referred to standards requiring every aspect or portion of buildings to be totally accessible, and pointed out that this was not the level of accessibility required by the Act. The final Guidelines for bathrooms are consistent with the Act's usable bathroom requirement, and provide the level of accessibility intended by Congress. As discussed previously in this preamble, the final Guidelines for usable bathrooms provide two sets of specifications. The second set of specifications provides somewhat greater accessibility than the first set of specifications. In view of this fact, the final Guidelines provide that in a dwelling unit with a single bathroom, the bathroom may be designed in accordance with either set of specifications—the first set or the second set. However, in a dwelling unit with more than one bathroom, all bathrooms in the unit must comply with the first set of specifications, or a minimum of one bathroom must comply with the second set of specifications, and all other bathrooms must be on an accessible route, and must have a usable entry door in accordance with the guidelines for Requirements 3 and 4. Additionally, the final Guidelines provide that a powder room must comply with the Act's usable bathroom requirements when the powder room is the only restroom facility provided on the accessible level of a multistory dwelling unit.

3. Discussion of Comments on Related Fair Housing Issues Compliance Deadline

Section 100.205 of the Fair Housing regulations incorporates the Act' design and construction requirements, including the requirement that

multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. Section 100.205(a) provides that covered multifamily dwellings shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 (and, therefore, exempt from Act's accessibility requirements), if they are occupied by that date, or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County, or local government on or before January 13, 1990.

Comment. The Department received a number of comments on the March 13, 1991 compliance deadline, and on methods of achieving compliance. Many commenters objected to the March 13, 1991 compliance deadline on the basis that this deadline was unreasonable. Several commenters from the building industry stated that, in many cases, design plans for buildings now under construction were submitted over two years ago, and it would be very expensive to make changes to buildings near completion. Other commenters stated that it is unreasonable to impose additional requirements on a substantially completed project that unexpectedly has been delayed for occupancy beyond the March 13, 1991 effective date.

Response. Section 804(f)(3)(C) of the Fair Housing Act states that the design and construction standards will be applied to covered multifamily dwelling units for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act. The Fair Housing Act was enacted on September 13, 1988. The date that is 30 months from that date is March 13, 1991. Accordingly, the inclusion of a March 13, 1991 compliance date in § 100.205 is a codification of the Act's compliance deadline. The Department has no authority to change that date. Only Congress may extend the March 13, 1991 deadline.

The Department, however, has been attentive to the concerns of the building industry, and has addressed these concerns, to the extent that it could, in prior published documents. In the preamble to the final Fair Housing rule, the Department addressed the objections of the building industry to the Department's reliance on "actual occupancy" as the sole basis for determining "first occupancy". (See 54 FR 3251; 24 CFR Ch. I, Subch. A, App. I at 585 (1990).) Commenters to the proposed Fair Housing rule, like the commenters to the proposed guidelines, argued that coverage of the design and construction requirements must be determinable at the beginning of planning and development, and that projects delayed by unplanned and uncontrollable events (labor strikes, Acts of God, etc.) should not be subject to the Act.

In order to accommodate the "legitimate concerns on the part of the building industry" the Department expanded § 100.205 of the final rule to provide that covered multifamily dwellings would be deemed to be for first occupancy if the last building permit or renewal thereof was issued on or before January 13, 1990. A date of fourteen months before the March 13, 1991 deadline was selected because the median construction time for multifamily housing projects of all sizes was determined to be fourteen months, based on data provided by the Marshall Valuation Service.

More recently, the Department addressed similar concerns of the building industry in the preamble to the proposed accessibility guidelines. In the June 15, 1990 publication, the Department recognized that projects designed in advance of the publication of the final Guidelines, may not become available for first occupancy until after March 13, 1991. To provide some guidance, the Department stated in the June 15, 1990 notice that compliance with the Option One guidelines would be considered as evidence of compliance with the Act, in projects designed before the issuance of the final Guidelines. The Department restated its position on this issue in a supplementary notice published in the Federal Register on August 1, 1990 (55 FR 31131). The specific circumstances under which the Department would consider compliance with the Option One guidelines as compliance with the accessibility requirements of the Act were more fully addressed in the August 1, 1990 notice.

Comment. A number of commenters requested extending the date of issuance of the last building permit from January 13, 1990 to some other date, such as June 15, 1990, the date of publication of the proposed guidelines; August 1, 1990, the date of publication of the supplementary notice; or today's date, the date publication of the final Guidelines.

Response. The date of January 13, 1990 was not randomly selected by the Department. This date was selected because it was fourteen months before the compliance deadline of March 13, 1991. As previously noted in this preamble, fourteen months was found to represent a reasonable median construction time for multifamily housing projects of all sizes, based on data contained in the Marshall Valuation Service. Builders have been on notice since January 23, 1989—the publication date of the final Fair Housing rule, that undertaking construction after January 13, 1990 without adequate attention to accessibility considerations would be at the builder's risk.

Comment. One commenter requested that the applicable building permit be the "primary" building permit for a particular building. Other commenters inquired about the status of building permits that are issued in stages, or about small modifications to building plans during construction which necessitate a reissued building permit.

Response. Following publication of the proposed Fair Housing regulation, and the many comments received at that time from the building industry expressing concern that "actual occupancy" was the only standard for determining "first occupancy", the Department gave careful consideration to the steps and stages involved in the building process. On the basis of this study, the Department determined that an appropriate standard to determine "first occupancy", other than actual occupancy, would be issuance of the last building permit on or before January 13, 1990. This additional standard was added to the final Fair Housing Act regulation. The Department believes that, aside from actual occupancy, issuance of the last building permit remains the appropriate standard.

Compliance Determinations by State and Local Jurisdictions

Comment. A few commenters questioned the role of States and units of local government in determining compliance with the Act's accessibility requirements. The commenters noted that (1) § 100.205(g) encourages States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the Act's accessibility requirements; but (2) § 100.205(h) provides that determinations of compliance or noncompliance by a State or a unit of general local government are not conclusive in enforcement proceedings under the Fair Housing Act. These commenters stated that, unless determinations of compliance or

noncompliance by a State or unit of general local government are deemed to be conclusive, local jurisdictions will be discouraged from performing compliance reviews because they will not be able to provide a building permit applicant with a sense of finality that proposed design plans are in compliance with the Act.

Response. Sections 100.205 (g) and (h) of the Fair Housing regulations implement sections 804(f)(5) (B) and (C), and section 804(f)(6)(b) of the Fair Housing Act. The language of §§ 100.205 (g) and (h) is taken directly from these statutory provisions. The Congress, not the Department, made the decision that determinations of compliance or noncompliance with the Act by a State or unit of general local government shall not be conclusive in enforcement proceedings. The Department, however, agrees with the position taken in the statute. The Department believes that it would be inappropriate to accord particular "weight" to determinations made by a wide variety of State and local government agencies involving a new civil rights law, without first having the benefit of some experience reviewing the accuracy of the determinations made by State and local authorities under the Fair Housing Act.

Comment. Two commenters stated that local building departments, especially those in smaller urban areas and in rural areas, do not have the manpower or expert knowledge to assure a proper determination of compliance, particularly in "close call" situations. The commenters recommended that liability for any infractions exclude local building departments unless the Department is willing to provide qualified personnel from its local field office to attend staff reviews of every building permit request.

Response. The Department is reluctant to assume that State and local jurisdictions, by performing compliance reviews, will subject themselves to liability under the Fair Housing Act, particularly in light of section 804(f)(5)(C) of the Act, which encourages States and localities to make reviews for compliance with the statute; and the implicit recognition, under Section 804(f)(6)(B), that these reviews may not be correct.

Comment. With reference to a violation of the Act's requirements, several commenters questioned how violations of the Act would be determined, and what the penalty would be for a violation. The commenters asked whether a builder would be cited, and fined, for each violation per building, or for each violation per unit.

Response. If it is determined that a violation of the Act has occurred, a Federal District Court or an administrative law judge (ALJ) has the authority to award actual damages, including damages for humiliation and emotional distress; punitive damages (in court) or civil penalties (in ALJ proceedings); injunctive relief; attorneys fees (except to the United States); and any other equitable relief that may be considered appropriate. Whether a violation will be found for each violation per building, for each violation per unit, or on any other basis, is properly left to the courts and the ALJs.

Enforcement Mechanisms

In the proposed guidelines, the Department solicited public comment on effective enforcement mechanisms (55 FR 24383–24384). Specifically, the Department requested comment on the effectiveness of: annual surveys to assess the number of projects developed with accessible buildings; recordkeeping requirements; and a "second opinion" by an independent, licensed architect or engineer on the site impracticality issue. The Department stated that comments on these proposals would be considered in connection with forthcoming amendments to the Fair Housing regulation.

The Department appreciates all comments submitted on the proposed enforcement mechanisms, and the suggestions offered on other possible enforcement mechanisms, such as a preconstruction review process, certification by a licensed architect, engineer or other building professional that a project is in compliance with the Act, and certification of local accessibility codes by the Department. All these comments will be considered in connection with future amendments to the Fair Housing Act regulation.

First Occupancy

Comment. A number of commenters requested clarification of the determination of "first occupancy" after March 13, 1991. A few commenters referred to the Act's first occupancy requirement as that of "ready for occupancy" by March 13, 1991.

Response. The phrase "ready for occupancy" does not correctly describe the standard contained in the Fair Housing Act. The Act states that covered multifamily dwellings subject to the Act's accessibility requirements are those that are "for first occupancy" after March 13, 1991. The standard, "first occupancy," is based on actual occupancy of the covered multifamily dwelling, or on issuance of the last building permit, or building permit renewal, on or before January 13, 1990. Where an individual is relying on a claim that a building was actually occupied on March 13, 1991, the Department, in making a determination of reasonable cause, will consider each situation on a case-by-case basis. As long as one dwelling unit in a covered multifamily dwelling is occupied, the one occupied dwelling unit is sufficient to meet the requirements for actual occupancy. However, the question of whether the occupancy was in compliance with State and local law (e.g., pursuant to a local occupancy permit, where one is required) will be a crucial factor in determining whether first occupancy has been achieved.

Comment. Several commenters requested clarification of "first occupancy", with respect to projects involving several buildings, or projects with extended build-out terms, such as planned communities with completion dates 5 to 10 years into the future.

Response. "First occupancy" is determined on a building-by-building basis, *not* on a project-by-project basis. For a project that involves several buildings, one building in the project could be built without reference to the accessibility requirements, while a building constructed next door might have to comply with the Act's requirements. The fact that one or more buildings in a multiple building project were occupied on March 13, 1991 will not be sufficient to afford an exemption from the Act's requirements for other buildings in the same project that are developed at a later time.

Costs of Adaptation

Comment. A few commenters requested clarification on who incurs the cost of making a unit adaptable for a disabled tenant.

Response. All costs associated with incorporating the new design and construction requirements of the Fair Housing Act are borne by the builder. There are, of course, situations where a tenant may need to make modifications to the dwelling unit which are necessary to make the unit accessible for that person's particular type of disability. The tenant would incur the cost of this type of modification—whether or not the dwelling unit is part of a multifamily dwelling exempt from the Act's accessibility requirements. For dwellings subject to the statute's accessibility requirements, the tenant's costs would be limited to those modifications that were not covered by the Act's design and construction requirements. (For example, the tenant would pay for the cost of purchasing

and installing grab bars.) For dwellings not subject to the accessibility requirements, the tenant would pay the cost of all modifications necessary to meet his or her needs. (Using the grab bar example, the tenant would pay both the cost of buying and installing the grab bars and the costs associated with adding bathroom wall reinforcement.)

Section 100.203 of the Fair Housing regulations provides that discrimination includes a refusal to permit, at the expense of a handicapped person, reasonable modifications of existing premises occupied or to be occupied by that person, if modifications are necessary to afford the person full enjoyment of the premises. In the case of a rental, the landlord may reasonably condition permission for a modification on the renter's agreeing to restore the interior of the unit to the condition that existed before its modification—reasonable wear and tear excepted. This regulatory section provides examples of reasonable modifications that a tenant may make to existing premises. The examples include bathroom wall reinforcement. In House Report No. 711, the Congress provided additional examples of reasonable modifications that could be made to existing premises by persons with disabilities:

> For example, persons who have a hearing disability could install a flashing light in order to 'see' that someone is ringing the doorbell. Elderly individuals with severe arthritis may need to replace the doorknobs with lever handles. A person in a wheelchair may need to install fold-back hinges in order to be able to go through a door or may need to build a ramp to enter the unit. Any modifications protected under this section [section 804(f)(3)(A)] must be reasonable and must be made at the expense of the individual with handicaps. (House Report at 25)

Reasonable Modification

Comment. One commenter requested clarification concerning what is meant by "reasonable modification".

Response. What constitutes "reasonable modification" is discussed to some extent in the preceding section, "Costs of Adaptation", and also was discussed extensively in the preambles to both the proposed and final Fair Housing rules. (See 53 FR 45002–45003, 54 FR 3247–3248; 24 CFR Ch. I, Subch. A, App. I at 580–583 (1990).) Additionally, examples of reasonable modifications are provided in 24 CFR 100.203(c).

Scope of Coverage

Comment. A number of comments were received on the issue of which types of dwelling units should be subject to the Act's accessibility requirements, and the number or percentage of dwelling units that must comply with the Act's requirements.

Response. The Department lacks the authority to adopt any of the proposals recommended by the commenters. The type of multifamily dwelling subject to the Fair Housing Act's accessibility requirements, and the number of individual dwelling units that must be made accessible were established by the Congress, not the Department. The Fair Housing Act defines "covered multifamily dwelling" to mean buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units." (See Section 804(f)(7) of the Act.) The Fair Housing Act requires that covered multifamily dwellings for first occupancy after March 13, 1991 be designed and constructed in accordance with the Act's accessibility requirements. The Act does not permit only a percentage of units in covered multifamily dwellings to be designed in accordance with the Act's requirements, nor does the Department have the authority so to provide by regulation.

VI. Other Matters

Codification of Guidelines. In order to assure the availability of the Guidelines, and the preamble to the Guidelines, to interested persons in the future, the Department has decided to codify both documents. The Guidelines will be codified in the 1991 edition of the Code of Federal Regulations as appendix II to the Fair Housing regulations (i.e., 24 CFR Ch. I, Subch. A, App. II), and the preamble to the Guidelines will be codified as appendix III (i.e., 24 CFR Ch. I, Subch. A, App. III).

Regulatory Impact Analysis. A Preliminary Impact Analysis was published in the **Federal Register** on September 7, 1990 (55 FR 37072–37129). A Final Regulatory Impact Analysis is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Impact. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will likely have a significant beneficial impact on family formation, maintenance or well-being. Housing designed in accordance with the Guidelines will offer more housing choices for families with members who have disabilities. Housing designed in accordance with the Guidelines also may be beneficial to families that do not have members with disabilities. For example, accessible building entrances, as required by the Act and implemented by the Guidelines, may benefit parents with children in strollers, and also allow residents and visitors the convenience of using luggage or shopping carts easily. Additionally, with the aging of the population, and the increase in incidence of disability that accompanies aging, significant numbers of people will be able to remain in units designed in accordance with the Guidelines as the aging process advances. Compliance with these Guidelines may also increase the costs of developing a multifamily building, and, thus, may increase the cost of renting or purchasing homes. Such costs could negatively affect families' ability to obtain housing. However, the Department believes that the benefits provided to families by housing that is in compliance with the Fair Housing Amendments Act outweigh the possible increased costs of housing.

Executive Order 12611, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice does not involve the preemption of State law by Federal statute or regulation and does not have federalism implications. The Guidelines only are recommended design specifications, not legal requirements. Accordingly, the Guidelines do not preempt State or local laws that address the same issues covered by the Guidelines.

Dated: February 27, 1991.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

Accordingly, the Department adds the Fair Housing Accessibility Guidelines as Appendix II and the text of the preamble to these final guidelines beginning at the heading "Adoption of Final Guidelines" and ending before "VI. Other Matters" as appendix III to 24 CFR, ch. I, subchapter A to read as follows:

Appendix II to Ch. I, subchapter A—Fair Housing Accessibility Guidelines

BILLING CODE 4210-28-M

U.S. Department of Housing and Urban Development
Office of Fair Housing and Urban Development

Fair Housing Accessibility Guidelines

Design Guidelines for Accessible/Adaptable Dwellings

Issued by the Department of Housing and Urban Development

Contents

Fair Housing Accessibility Guidelines

Section 1. Introduction

Authority

Section 804(f)(5)(C) of the Fair Housing Amendments Act of 1988 directs the Secretary of the Department of Housing and Urban Development to provide technical assistance to States, local governments, and other persons in implementing the accessibility requirements of the Fair Housing Act. These guidelines are issued under this statutory authority.

Purpose

The purpose of these guidelines is to provide technical guidance on designing dwelling units as required by the Fair Housing Amendments Act of 1988 (Fair Housing Act). These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

Scope

These guidelines apply only to the design and construction requirements of 24 CFR 100.205. Compliance with these guidelines do not relieve persons participating in a Federal or Federally-assisted program or activity from other requirements, such as those required by section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157). Accessible design requirements for Section 504 are found at 24 CFR Part 8. Accessible design requirements for the Architectural Barriers Act are found at 24 CFR Part 40.

Organization of Guidelines

The design guidelines are incorporated in Section 5 of this document. Each guideline cites the appropriate paragraph of HUD's regulation at 24 CFR 100.205; quotes from the regulation to identify the required design features, and states recommended specifications for each design feature.

Generally, these guidelines rely on the American National Standards Institute (ANSI) A117.1-1986, American National Standard for Buildings and Facilities--Providing Accessibility and Usability for Physically Handicapped People (ANSI Standard). Where the guidelines rely on sections of the ANSI Standard, the ANSI sections are cited. Only those sections of the ANSI Standard cited in the guidelines are recommended for compliance with 24 CFR 100.205. For those guidelines that differ from the ANSI Standard, recommended specifications are provided. The texts of cited ANSI sections are not reproduced in the guidelines. The complete text of the 1986 version of the ANSI A117.1 Standard may be purchased from the American National Standards Institute, 1430 Broadway, New York, NY 10018.

Section 2. Definitions

As used in these Guidelines:

"Accessible", when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard or these guidelines is "accessible" within the meaning of this paragraph.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard, or Section 5, Requirement 1 of these guidelines is an "accessible route". In the circumstances described in Section 5, Requirements 1 and 2, "accessible route" may include access via a vehicular route.

"Adaptable dwelling units", when used with respect to covered multifamily dwellings, means dwelling units that include the features of adaptable design specified in 24 CFR 100.205(c)(2)-(3).

"ANSI A117.1-1986" means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people.

"Assistive device" means an aid, tool, or instrument used by a person with disabilities to assist in activities of daily living. Examples of assistive devices include tongs, knob-turners, and oven-rack pusher/pullers.

"Bathroom" means a bathroom which includes a water closet (toilet), lavatory (sink), and bathtub or shower. It does not include single-fixture facilities or those with only a water closet and lavatory. It does include a compartmented bathroom. A

compartmented bathroom is one in which the fixtures are distributed among interconnected rooms. A compartmented bathroom is considered a single unit and is subject to the Act's requirements for bathrooms.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to parking or passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 (see Section 5, Requirement 1 of these guidelines) or a comparable standard complies with the requirements of this paragraph.

"Clear" means unobstructed.

"Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings. See Section 5, Requirement 2 of these guidelines.

"Controlled substance" means any drug or other substance, or immediate precursor included in the definition in Section 102 of the Controlled Substances Act (21 U.S.C. 802).

"Covered multifamily dwellings" or "covered multifamily dwellings subject to the Fair Housing Amendments" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units. Dwelling units within a single structure separated by firewalls do not constitute separate buildings.

"Dwelling unit" means a single unit of residence for a household of one or more persons. Examples of dwelling units covered by these guidelines include: condominiums; an apartment unit within an apartment building; and other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any exterior access point to a building or portion of a building used by residents for the purpose of entering. For purposes of these guidelines, an "entrance" does not include a door to a loading dock or a door used primarily as a service entrance, even if nonhandicapped residents occasionally use that door to enter.

"Finished grade" means the ground surface of the site after all construction, levelling, grading, and development has been completed.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of these guidelines, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

As used in this definition:

(a) "Physical or mental impairment" includes:
  (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism. These guidelines are designed to make units accessible or adaptable for people with physical handicaps.

(b) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means:
  (1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
  (2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  (3) Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

"Loft" means an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling.

"Multistory dwelling unit" means a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Single-story dwelling unit" means a dwelling unit with all finished living space located on one floor.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

"Slope" means the relative steepness of the land between two points and is calculated as follows: The distance and elevation between the two points (e.g., an entrance and a passenger loading zone) are determined from a topographical map. The difference in elevation is divided by the distance and that fraction is multiplied by 100 to obtain a percentage slope figure. For example, if a principal entrance is ten feet from a passenger loading zone, and the principal entrance is raised one foot higher than the passenger loading zone, then the slope is 1/10 x 100 = 10%.

"Story" means that portion of a dwelling unit between the upper surface of any floor and the upper surface of the floor next above, or the roof of the unit. Within the context of dwelling units, the terms "story" and "floor" are synonymous.

"Undisturbed site" means the site before any construction, levelling, grading, or development associated with the current project.

"Vehicular or pedestrian arrival points" means public or resident parking areas, public transportation stops, passenger loading zones, and public streets or sidewalks.

"Vehicular route" means a route intended for vehicular traffic, such as a street, driveway or parking lot.

Section 3. Fair Housing Act Design and Construction Requirements

The regulations issued by the Department at 24 CFR 100.205 state:

§ 100.205 Design and construction requirements.

(a) Covered multifamily dwellings for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multifamily dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991 if they are occupied by that date or if the last building permit or renewal thereof for the covered multifamily dwellings is issued by a State, County or local government on or before January 13, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1): A real estate developer plans to construct six covered multifamily dwelling units on a site with a hilly terrain. Because of the terrain, it will be necessary to climb a long and steep stairway in order to enter the dwellings. Since there is no practical way to provide an accessible route to any of the dwellings, one need not be provided.

Example (2): A real estate developer plans to construct a building consisting of 10 units of multifamily housing on a waterfront site that floods frequently. Because of this unusual characteristic of the site, the builder plans to construct the building on stilts. It is customary for housing in the geographic area where the site is located to be built on stilts. The housing may lawfully be constructed on the proposed site on stilts even though this means that there will be no practical way to provide an accessible route to the building entrance.

Example (3): A real estate developer plans to construct a multifamily housing facility on a particular site. The developer would like the facility to be built on the site to contain as many units as possible. Because of the configuration and terrain of the site, it is possible to construct a building with 105 units on the site provided the site does not have an accessible route leading to the building entrance. It is also possible to construct a building on the site with an accessible route leading to the building entrance. However, such a building would have no more than 100 dwelling units. The building to be constructed on the site must have a building entrance on an accessible route because it is not impractical to provide such an entrance because of the terrain or unusual characteristics of the site.

(c) All covered multifamily dwellings for first occupancy after March 13, 1991 with a building entrance on an accessible route shall be designed and constructed in such a manner that—

(1) The public and common use areas are readily accessible to and usable by handicapped persons;

(2) All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(3) All premises within covered multifamily dwelling units contain the following features of adaptable design:

(i) An accessible route into and through the covered dwelling unit;

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(iii) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and

(iv) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(d) The application of paragraph (c) of this section may be illustrated by the following examples:

Example (1): A developer plans to construct a 100 unit condominium apartment building with one elevator. In accordance with paragraph (a), the building has at least one accessible route leading to an accessible entrance. All 100 units are covered multifamily dwelling units and they all must be designed and constructed so that they comply with the accessibility requirements of paragraph (c) of this section.

Example (2): A developer plans to construct 30 garden apartments in a three story building. The building will not have an elevator. The building will have one accessible entrance which will be on the first floor. Since the building does not have an elevator, only the "ground floor" units are covered multifamily units. The "ground floor" is the first floor because that is the floor that has an accessible entrance. All of the dwelling units on the first floor must meet the accessibility requirements of paragraph (c) of this section and must have access to at least one of each type of public or common use area available for residents in the building.

(e) Compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of paragraph (c)(3) of this section.

(f) Compliance with a duly enacted law of a State or unit of general local government that includes the requirements of paragraphs (a) and (c) of this section satisfies the requirements of paragraphs (a) and (c) of this section.

(g)(1) It is the policy of HUD to encourage States and units of general local government to include, in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraphs (a) and (c) of this section.

(2) A State or unit of general local government may review and approve newly constructed multifamily dwellings for the purpose of making determinations as to whether the requirements of paragraphs (a) and (c) of this section are met.

(h) Determinations of compliance or noncompliance by a State or a unit of general local government under paragraph (f) or (g) of this section are not conclusive in enforcement proceedings under the Fair Housing Amendments Act.

(i) This subpart does not invalidate or limit any law of a State or political subdivision of a State that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subpart.

Section 4. Application of the Guidelines

The design specifications (guidelines) presented in Section 5 apply to new construction of "covered multifamily dwellings", as defined in Section 2. These guidelines are recommended for designing dwellings that comply with the requirements of the Fair Housing Amendments Act of 1988.

Section 5. Guidelines

Requirement 1. Accessible building entrance on an accessible route.

Under section 100.205(a), covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site.

Guideline

(1) Building entrance. Each building on a site shall have at least one building entrance on an accessible route unless prohibited by the terrain, as provided in paragraphs (2)(a)(i) or (2)(a)(ii), or unusual characteristics of the site, as provided in paragraph (2)(b). This guideline applies both to a single building on a site and to multiple buildings on a site.

(a) Separate ground floor unit entrances. When a ground floor unit of a building has a separate entrance, each such ground floor unit shall be served by an accessible route, except for any unit where the terrain or unusual characteristics of the site prohibit the provision of an accessible route to the entrance of that unit.

(b) Multiple entrances. Only one entrance is required to be accessible to any one ground floor of a building, except in cases where an individual dwelling unit has a separate exterior entrance, or where the building contains clusters of dwelling units, with each cluster sharing a different exterior entrance. In these cases, more than one entrance may be required to be accessible, as determined by analysis of the site. In every case, the accessible entrance should be on an accessible route to the covered dwelling units it serves.

(2) Site impracticality. Covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. Covered multifamily dwellings without elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route unless terrain or unusual characteristics of the site are such that the following conditions are found to exist:

(a) Site impracticality due to terrain. There are two alternative tests for determining site impracticality due to terrain: the individual building test provided in paragraph (i), or the site analysis test provided in paragraph (ii). These tests may be used as follows.

A site with a single building having a common entrance for all units may be analyzed only as described in paragraph (i).

All other sites, including a site with a single building having multiple entrances serving either individual dwelling units or clusters of dwelling units, may be analyzed using the methodology in either paragraph (i) or paragraph (ii). For these sites for which either test is applicable, regardless of which test is selected, at least 20% of the total ground floor units in nonelevator buildings, on any site, must comply with the guidelines.

(i) Individual building test. It is impractical to provide an accessible entrance served by an accessible route when the terrain of the site is such that:

(A) the slopes of the undisturbed site measured between the planned entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance exceed 10 percent; and

(B) the slopes of the planned finished grade measured between the entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance also exceed 10 percent.

If there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the slope for the purposes of this paragraph (i) will be measured to the closest vehicular or pedestrian arrival point.

For purposes of these guidelines, vehicular or pedestrian arrival points include public or resident parking areas; public transportation stops; passenger loading zones; and public streets or sidewalks. To determine site impracticality, the slope would be measured at ground level from the point of the planned entrance on a straight line to (i) each vehicular or pedestrian arrival point that is within 50 feet of the planned entrance, or (ii) if there are no vehicular or pedestrian arrival points within that specified area, the vehicular or pedestrian arrival point closest to the planned entrance. In the case of sidewalks, the closest point to the entrance will be where a public sidewalk entering the site intersects with the sidewalk to the entrance. In the case of resident parking areas, the closest point to the planned entrance will be measured from the entry point to the parking area that is located closest to the planned entrance.

(ii) Site analysis test. Alternatively, for a site having multiple buildings, or a site with a single building with multiple entrances, impracticality of providing

an accessible entrance served by an accessible route can be established by the following steps:

(A) The percentage of the total buildable area of the undisturbed site with a natural grade less than 10% slope shall be calculated. The analysis of the existing slope (before grading) shall be done on a topographic survey with two foot (2') contour intervals with slope determination made between each successive interval. The accuracy of the slope analysis shall be certified by a professional licensed engineer, landscape architect, architect or surveyor.

(B) To determine the practicality of providing accessibility to planned multifamily dwellings based on the topography of the existing natural terrain, the minimum percentage of ground floor units to be made accessible should equal the percentage of the total buildable area (not including floodplains, wetlands, or other restricted use areas) of the undisturbed site that has an existing natural grade of less than 10% slope.

(C) In addition to the percentage established in paragraph (B), all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%

(b) Site impracticality due to unusual characteristics. Unusual characteristics include sites located in a federally-designated floodplain or coastal high-hazard area and sites subject to other similar requirements of law or code that the lowest floor or the lowest structural member of the lowest floor must be raised to a specified level at or above the base flood elevation. An accessible route to a building entrance is impractical due to unusual characteristics of the site when:

(i) the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance; or

(ii) if there are no vehicular or pedestrian arrival points within 50 feet of the planned entrance, the unusual characteristics result in a difference in finished grade elevation exceeding 30 inches and 10 percent measured between an entrance and the closest vehicular or pedestrian arrival point.

(3) Exceptions to site impracticality. Regardless of site considerations described in paragraphs (1) and (2), an accessible entrance on an accessible route is practical when:

(a) There is an elevator connecting the parking area with the dwelling units on a ground floor. (In this case, those dwelling units on the ground floor served by an elevator, and at least one of each type of public and common use areas, would be subject to these guidelines.) However:

(i) Where a building elevator is provided only as a means of creating an accessible route to dwelling units on a ground floor, the building is not considered an elevator building for purposes of these guidelines; hence, only the ground floor dwelling units would be covered.

(ii) If the building elevator is provided as a means of access to dwelling units other than dwelling units on a ground floor, then the building is an elevator building which is a covered multifamily dwelling, and the elevator in that building must provide accessibility to all dwelling units in the building, regardless of the slope of the natural terrain; or

(b) An elevated walkway is planned between a building entrance and a vehicular or pedestrian arrival point and the planned walkway has a slope no greater than 10 percent.

(4) Accessible entrance. An entrance that complies with ANSI 4.14 meets section 100.205(a).

(5) Accessible route. An accessible route that complies with ANSI 4.3 would meet section 100.205(a). If the slope of the finished grade between covered multifamily dwellings and a public or common use facility (including parking) exceeds 8.33%, or where other physical barriers (natural or manmade) or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility.

Requirement 2. Accessible and usable public and common use areas.

Section 100.205(c)(1) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that the public and common use areas are readily accessible to and usable by handicapped persons.

Guideline

The following chart identifies the public and common use areas that should be made accessible, cites the appropriate section of the ANSI Standard, and describes the appropriate application of the specifications, including modifications to the referenced Standard.

BASIC COMPONENTS FOR ACCESSIBLE AND USABLE PUBLIC AND COMMON USE AREAS OR FACILITIES

Accessible element or space	ANSI A117 1 section	Application
1. Accessible route(s)	4.3	Within the boundary of the site: (a) From public transportation stops, accessible parking spaces, accessible passenger loading zones, and public streets or sidewalks to accessible building entrances (subject to site considerations described in section 5). (b) Connecting accessible buildings, facilities, elements and spaces that are on the same site On-grade walks or paths between separate buildings with covered multifamily dwellings, while not required, should be accessible unless the slope of finish grade exceeds 8.33% at any point along the route Handrails are not required on these accessible walks. (c) Connecting accessible building or facility entrances with accessible spaces and elements within the building or facility, including adaptable dwelling units. (d) Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common-use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility
2. Protruding objects.....	4.4	Accessible routes or maneuvering space including, but not limited to halls, corridors, passageways, or aisles.
3. Ground and floor surface treatments.....	4.5	Accessible routes, rooms, and spaces, including floors, walks, ramps, stairs, and curb ramps.
4 .Parking and passenger-loading zones	4 6	If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units, accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings, and accessible parking at facilities (e.g., swimming pools) that serve accessible buildings.
5. Curb ramps	4.7	Accessible routes crossing curbs.
6. Ramps	4.8	Accessible routes with slopes greater than 1:20.
7 Stairs.....	4.9	Stairs on accessible routes connecting levels not connected by an elevator
8. Elevator	4.10	If provided.
9. Platform lift.....	4.11	May be used in lieu of an elevator or ramp under certain conditions.
10 Drinking fountains and water coolers	4.15	Fifty percent of fountains and coolers on each floor, or at least one, if provided in the facility or at the site.
11 Toilet rooms and bathing facilities ..... (including water closets, toilet rooms and stalls, urinals, lavatories and mirrors, bathtubs, shower stalls, and sinks.)	4.22	Where provided in public-use and common-use facilities, at least one of each fixture provided per room.
12 Seating, tables, or work surfaces.....	4.30	If provided in accessible spaces, at least one of each type provided.
13. Places of assembly	4.31	If provided in the facility or at the site.
14 Common-use spaces and facilities ..... (including swimming pools, playgrounds, entrances, rental offices, lobbies, elevators, mailbox areas, lounges, halls and corridors, and the like.)	4.1 through 4.30	If provided in the facility or at the site: (a) Where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps. (b) Where practical, access to all or a portion of nature trails and jogging paths.
15. Laundry rooms	4.32.6	If provided in the facility or at the site, at least one of each type of appliance provided in each laundry area, except that laundry rooms serving covered multifamily dwellings would not be required to have front-loading washers in order to meet the requirements of § 100.205(c)(1). (Where front loading washers are not provided, management will be expected to provide assistive devices on request if necessary to permit a resident to use a top loading washer.)

Requirement 3. Usable doors.

Section 100.205(c)(2) provides that covered multifamily dwellings with a building entrance on an accessible route shall be designed in such a manner that all the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs.

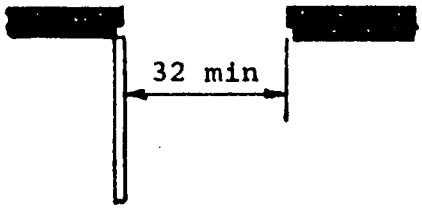
Guideline

Section 100.205(c)(2) would apply to doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units.

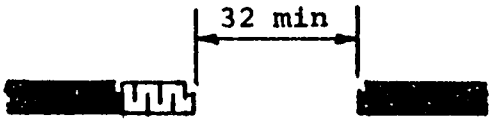
(1) On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI 4.13 would meet this requirement.

(2) Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet this requirement. (See Fig. 1 (a), (b), and (c).) Openings more than 24 inches in depth are not considered doorways. (See Fig. 1 (d).)

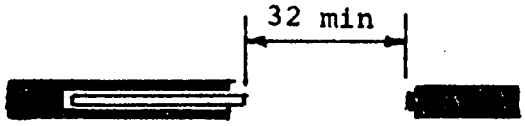
Note:
A 34-inch door, hung in the standard manner, provides an acceptable nominal 32-inch clear opening. This door can be adapted to provide a wider opening by using offset hinges, by removing lower portions of the door stop, or both. Pocket or sliding doors are acceptable doors in covered dwelling units and have the added advantage of not impinging on clear floor space in small rooms. The nominal 32-inch clear opening provided by a standard six-foot sliding patio door assembly is acceptable.



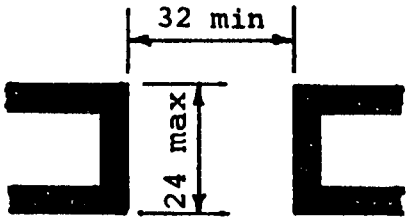
(a) Hinged Door



(b) Folding Door



(c) Sliding Door



(d) Maximum Doorway Depth

Fig. 1 Clear Doorway Width and Depth

Requirement 4. Accessible route into and through the covered dwelling unit.

Section 100.205(c)(3)(i) provides that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit.

Guideline

Accessible routes into and through dwelling units would meet section 100.205(c)(3)(i) if:

(1) A minimum clear width of 36 inches is provided.

(2) In single-story dwelling units, changes in level within the dwelling unit with heights between 1/4 inch and 1/2 inch are beveled with a slope no greater than 1:2. Except for design features, such as a loft or an area on a different level within a room (e.g., a sunken living room), changes in level greater than 1/2 inch are ramped or have other means of access. Where a single story dwelling unit has special design features, all portions of the single-story unit, except the loft or the sunken or raised area, are on an accessible route; and

(a) In single-story dwelling units with lofts, all spaces other than the loft are on an accessible route.

(b) Design features such as sunken or raised functional areas do not interrupt the accessible route through the remainder of the dwelling unit.

(3) In multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator (a) is the primary entry to the unit, (b) complies with Requirements 2 through 7 with respect to the rooms located on the entry/accessible floor; and (c) contains a bathroom or powder room which complies with Requirement 7. (Note: multistory dwelling units in non-elevator buildings are not covered dwelling units because, in such cases, there is no ground floor unit.)

(4) Except as provided in paragraphs (5) and (6) below, thresholds at exterior doors, including sliding door tracks, are no higher than 3/4 inch. Thresholds and changes in level at these locations are beveled with a slope no greater than 1:2.

(5) Exterior deck, patio, or balcony surfaces are no more than 1/2 inch below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface is no more than 4 inches below the floor level of the interior of the dwelling unit, or lower if required by local building code.

(6) At the primary entry door to dwelling units with direct exterior access, outside landing surfaces constructed of impervious materials such as concrete, brick or flagstone, are no more than 1/2 inch below the floor level of the interior of the dwelling unit. The finished surface of this area that is located immediately outside the entry may be sloped, up to 1/8 inch per foot (12 inches), for drainage.

Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

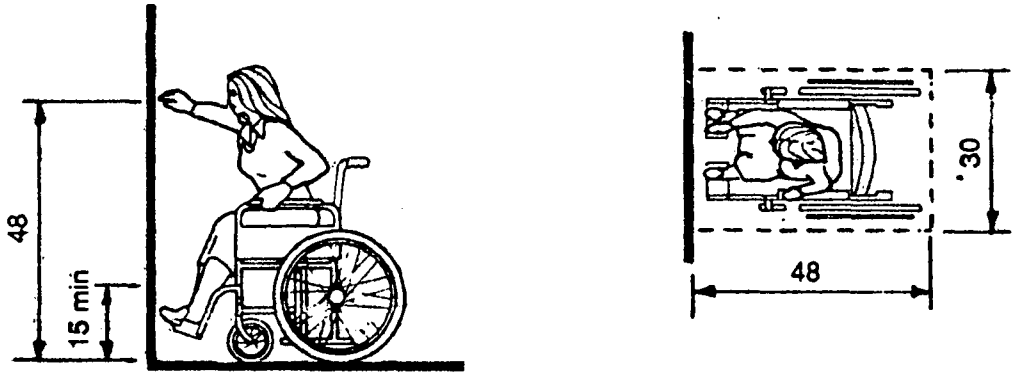
Section 100.205(c)(3)(ii) requires that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

Guideline

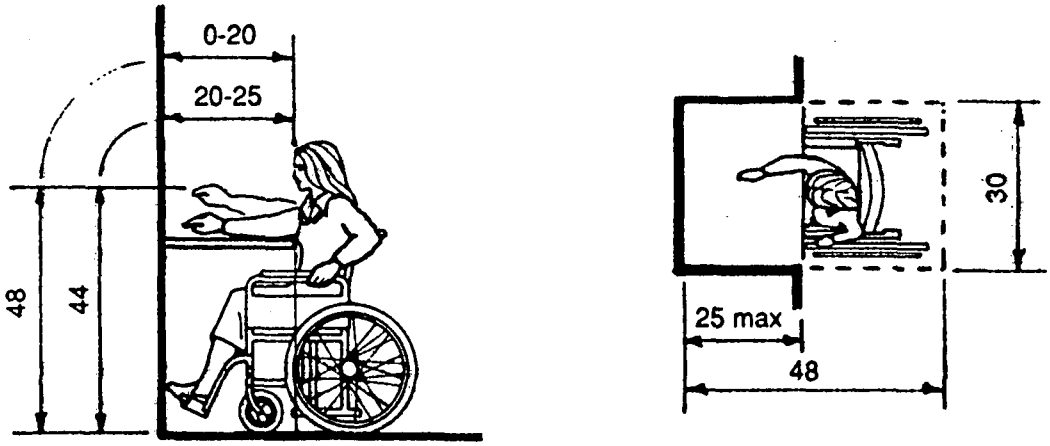
Light switches, electrical outlets, thermostats and other environmental controls would meet section 100.205(c)(3)(ii) if operable parts of the controls are located no higher than 48 inches, and no lower than 15 inches, above the floor. If the reach is over an obstruction (for example, an overhanging shelf) between 20 and 25 inches in depth, the maximum height is reduced to 44 inches for forward approach; or 46 inches for side approach, provided the obstruction (for example, a kitchen base cabinet) is no more than 24 inches in depth. Obstructions should not extend more than 25 inches from the wall beneath a control. (See Fig. 2.)

Note

Controls or outlets that do not satisfy these specifications are acceptable provided that comparable controls or outlets (i.e., that perform the same functions) are provided within the same area and are accessible, in accordance with this guideline for Requirement 5.

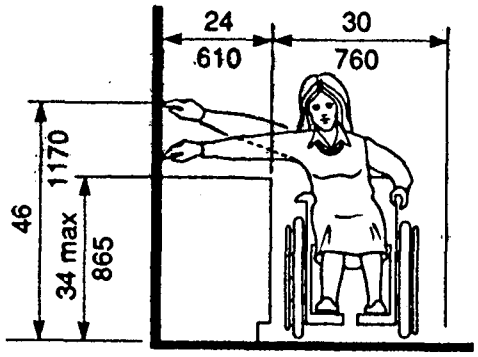


(a) Forward Reach Limit



NOTE: Clear knee space should be as deep as the reach distance.

(b) Maximum Forward Reach
Over an Obstruction



(c) Maximum Side Reach Over Obstruction

Fig. 2 Reach Ranges

Requirement 6. Reinforced walls for grab bars.

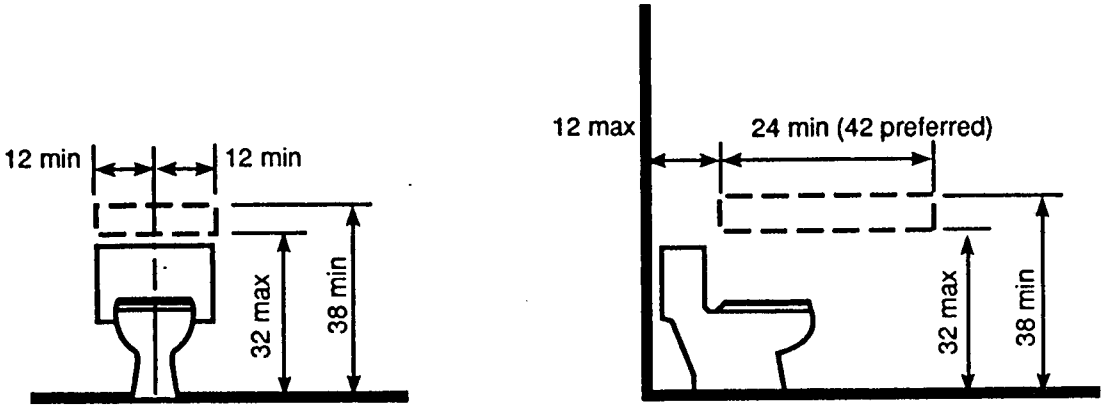
Section 100.205(c)(3)(iii) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided.

Guideline

Reinforced bathroom walls to allow later installation of grab bars around the toilet, tub, shower stall and shower seat, where such facilities are provided, would meet section 100.205(c)(3)(iii) if reinforced areas are provided at least at those points where grab bars will be mounted. (For example, see Figs. 3, 4 and 5.) Where the toilet is not placed adjacent to a side wall, the bathroom would comply if provision was made for installation of floor mounted, foldaway or similar alternative grab bars. Where the powder room (a room with a toilet and sink) is the only toilet facility located on an accessible level of a multistory dwelling unit, it must comply with this requirement for reinforced walls for grab bars.

Note:
Installation of bathtubs is not limited by the illustrative figures; a tub may have shelves or benches at either end; or a tub may be installed without surrounding walls, if there is provision for alternative mounting of grab bars. For example, a sunken tub placed away from walls could have reinforced areas for installation of floor-mounted grab bars. The same principle applies to shower stalls -- e.g., glass-walled stalls could be planned to allow floor-mounted grab bars to be installed later.

Reinforcement for grab bars may be provided in a variety of ways (for example, by plywood or wood blocking) so long as the necessary reinforcement is placed so as to permit later installation of appropriate grab bars.



Reinforced Areas for Installation of Grab Bars

Fig. 3 Water Closets in Adaptable Bathrooms

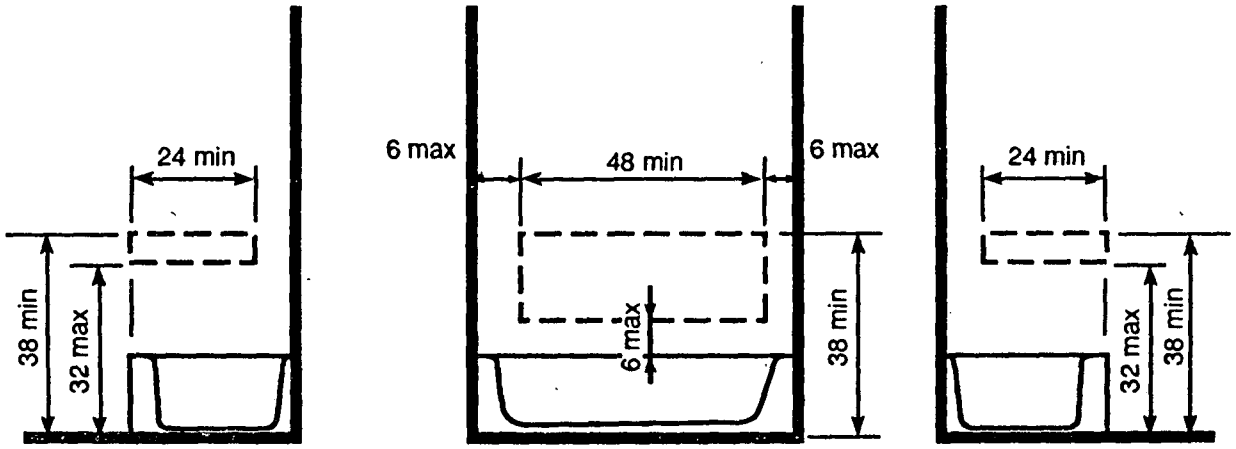


Fig. 4 Location of Grab Bar Reinforcements for Adaptable Bathtubs

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars for typical fixture configurations.

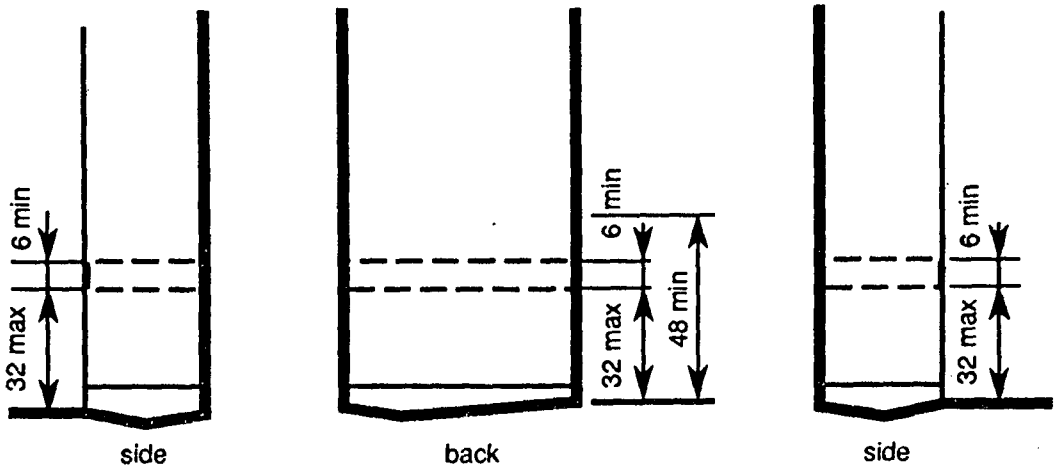


Fig. 5 Location of Grab Bar Reinforcements for Adaptable Showers

NOTE: The areas outlined in dashed lines represent locations for future installation of grab bars.

Requirement 7. Usable kitchens and bathrooms.

Section 100.205(c)(3)(iv) requires that covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

Guideline

(1) Usable kitchens. Usable kitchens would meet section 100.205(c)(3)(iv) if:

(a) A clear floor space at least 30 inches by 48 inches that allows a parallel approach by a person in a wheelchair is provided at the range or cooktop and sink, and either a parallel or forward approach is provided at oven, dish washer, refrigerator/freezer or trash compactor. (See Fig. 6)

(b) Clearance between counters and all opposing base cabinets, countertops, appliances or walls is at least 40 inches.

(c) In U-shaped kitchens with sink or range or cooktop at the base of the "U", a 60-inch turning radius is provided to allow parallel approach, or base cabinets are removable at that location to allow knee space for a forward approach.

(2) Usable bathrooms. To meet the requirements of section 100.205(c)(3)(iv) either:

All bathrooms in the dwelling unit comply with the provisions of paragraph (a); or

At least one bathroom in the dwelling unit complies with the provisions of paragraph (b), and all other bathrooms and powder rooms within the dwelling unit must be on an accessible route with usable entry doors in accordance with the guidelines for Requirements 3 and 4.

However, in multistory dwelling units, only those bathrooms on the accessible level are subject to the requirements of section 100.205(c)(3)(iv). Where a powder room is the only facility provided on the accessible level of a multistory dwelling unit, the powder room must comply with provisions of paragraph (a) or paragraph (b). Powder rooms that are subject to the requirements of section 100.205(c)(3)(iv) must have reinforcements for grab bars as provided in the guideline for Requirement 6.

(a) Bathrooms that have reinforced walls for grab bars (see Requirement 6) would meet section 100.205(c)(3)(iv) if:

(i) Sufficient maneuvering space is provided within the bathroom for a person using a wheelchair or other mobility aid to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if the maneuvering space is provided. Maneuvering spaces may include any kneespace or toespace available below bathroom fixtures.

(ii) Clear floor space is provided at fixtures as shown in Fig. 7 (a), (b), (c) and (d). Clear floor space at fixtures may overlap.

(iii) If the shower stall is the only bathing facility provided in the covered dwelling unit, the shower stall measures at least 36 inches x 36 inches.

Note:
Cabinets under lavatories are acceptable provided the bathroom has space to allow a parallel approach by a person in a wheelchair; if parallel approach is not possible within the space, any cabinets provided would have to be removable to afford the necessary knee clearance for forward approach.

(b) Bathrooms that have reinforced walls for grab bars (see Requirement 6) would meet section 100.205(c)(3)(iv) if:

(i) Where the door swings into the bathroom, there is a clear space (approximately, 2' 6" by 4'0") within the room to position a wheelchair or other mobility aid clear of the path of the door as it is closed and to permit use of fixtures. This clear space can include any kneespace and toespace available below bathroom fixtures.

(ii) Where the door swings out, a clear space is provided within the bathroom for a person using a wheelchair or other mobility aid to position the wheelchair such that the person is allowed use of fixtures. There also shall be clear space to allow persons using wheelchairs to reopen the door to exit.

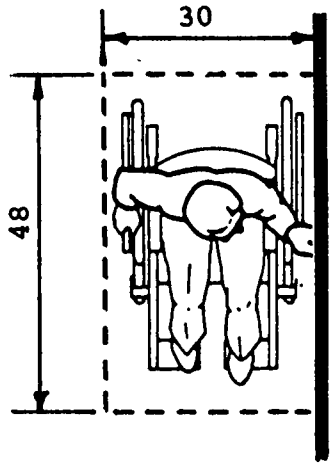
(iii) When both tub and shower fixtures are provided in the bathroom, at least one is made accessible. When two or more lavatories in a bathroom are provided, at least one is made accessible.

(iv) Toilets are located within bathrooms in a manner that permit a grab bar to be installed on one side of the fixture. In locations where toilets are adjacent to walls or bathtubs, the center line of the fixture is a minimum of 1'6" from the obstacle. The other (non-grab bar) side of the toilet fixture is a minimum of 1'3" from the finished surface of adjoining walls, vanities or from the edge of a lavatory. (See Figure 7(a).)

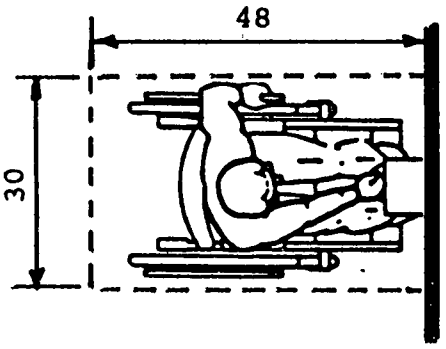
(v) Vanities and lavatories are installed with the centerline of the fixture a minimum of 1'3" horizontally from an adjoining wall or fixture. The top of the fixture rim is a maximum height of 2'10" above the finished floor. If kneespace is provided below the vanity, the bottom of the apron is at least 2'3" above the floor. If provided, full kneespace (for front approach) is at least 1'5" deep. (See Figure 7(c).)

(vi) Bathtubs and tub/showers located in the bathroom provide a clear access aisle adjacent to the lavatory that is at least 2'6" wide and extends for a length of 4'0" (measured from the head of the bathtub). (See. Figure 8.)

(vii) Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2'6" wide by 4'0" should be available outside the stall. (See Figure 7(d).) If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36 x 36 or smaller, the shower stall must have reinforcing to allow for installation of an optional wall hung bench seat.

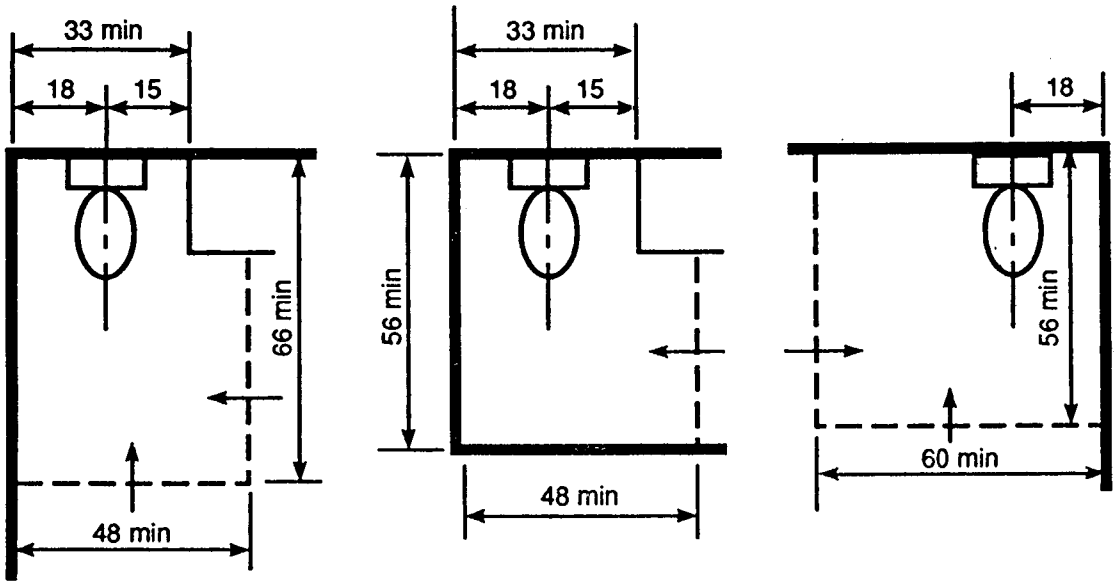


(a) Parallel Approach

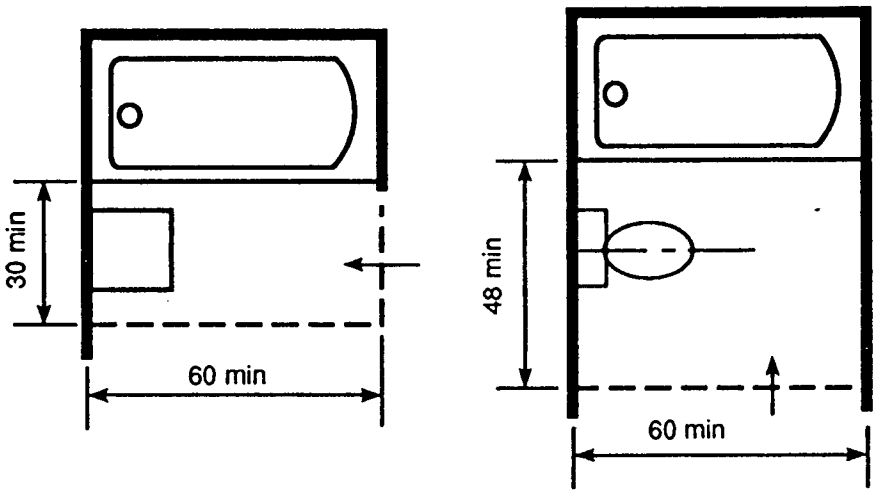


(b) Forward Approach

Fig. 6 Minimum Clear Floor Space for Wheelchairs

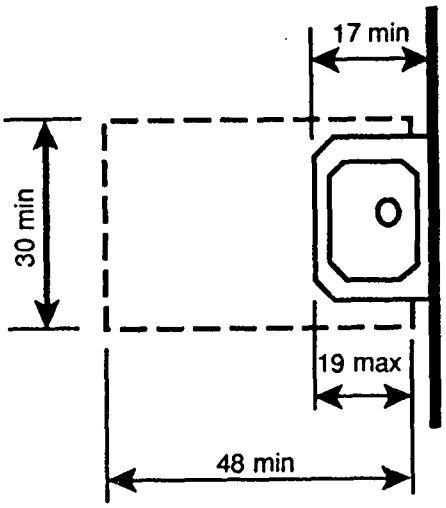


(a) Clear Floor Space for Water Closets

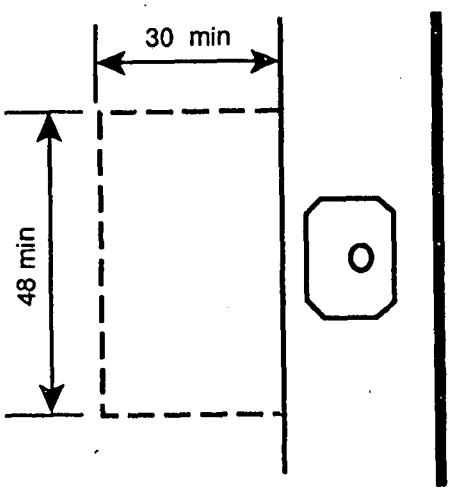


(b) Clear Floor Space at Bathtubs

Fig. 7 Clear Floor Space for Adaptable Bathrooms

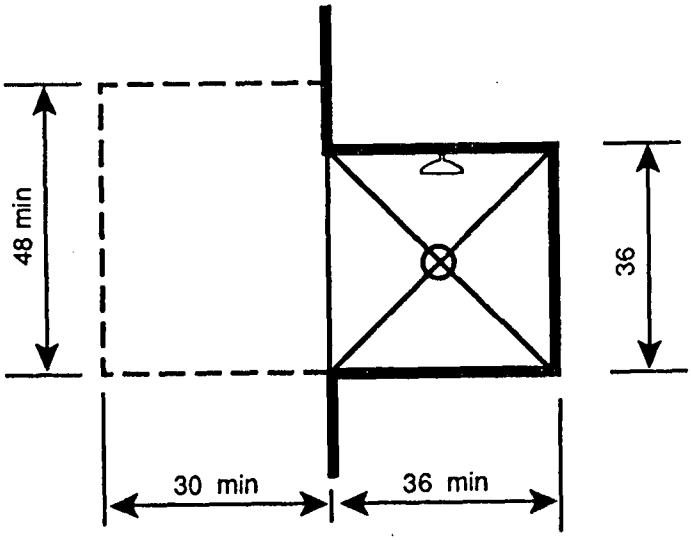


Lavatory With Knee Space



Lavatory Without Knee Space

(c) Clear Floor Space at Lavatories



(d) Clear Floor Space at Shower

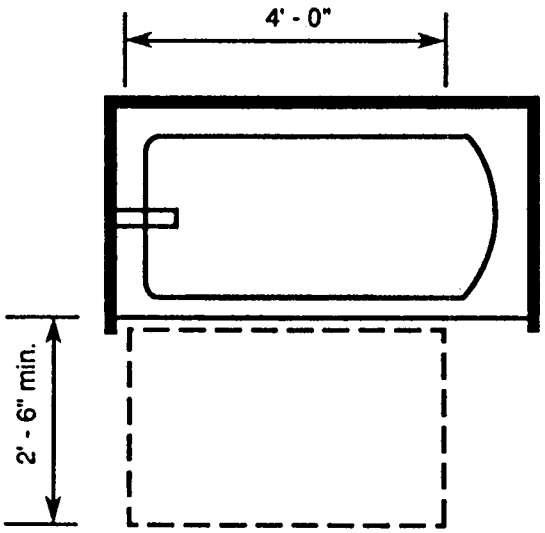


Fig. 8 Alternative Specification – Clear Floor Space at Bathtub

Appendix III to Ch. I, Subchapter A—Preamble to Final Housing Accessibility Guidelines (Published March 6, 1991).

[FR Doc. 91–5228 Filed 3–5–91; 8:45 am]

BILLING CODE 4210–28–M

BILLING CODE 4210–28–C

federal register

Wednesday
March 6, 1991

Part VII

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Temporary Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3909-6]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Temporary final rule.

SUMMARY: EPA today promulgates temporary regulations to implement the 1991 limits on the production and consumption of ozone-depleting chemicals required by section 604 of the Clean Air Act (the Act) as amended by the Clean Air Act Amendments of 1990 (the Amendments), Public Law 101-549. The regulations take effect immediately and remain in effect only during 1991. They will be replaced by regulations for 1992 and subsequent years that EPA plans to propose in several months and promulgate in final form by the deadline established under section 604(c), September 15, 1991.

Today's rule revises the Agency's existing regulations [1] that implement the Montreal Protocol on Substances that Deplete the Ozone Layer, which the United States ratified in 1988. (Except to the extent revised by this rule, those regulations remain in effect.) The Protocol requires each country that ratifies the agreement to limit its production and consumption (defined as production plus imports minus exports) of chlorofluorocarbon; CFC-11, trichlorofluoromethane; CFC-12, dichlorodifluoromethane; CFC-113, trichlorotrifluoroethane; CFC-114, dichlorotetrafluoroethane; CFC-115, chloropentafluoroethane; and Halon-1211, bromochlorodifluoromethane; Halon-1301, bromotrifluoromethane; and Halon-2402, dibromotetrafluoroethane, according to a specified schedule. The Agency implemented the Protocol's reduction requirements by apportioning baseline allowances to companies based on their historical level of production and consumption of the chemicals and allocating the companies a percentage of their baseline allowances in accordance with the Protocol's schedule.

The rule promulgated today revises the regulations as needed to implement the 1991 production and consumption limits under section 604 in a manner consistent with the United States' obligations under the Protocol. Specifically, it apportions to companies baseline allowances for the chemicals not previously regulated under the Protocol but subject to reduction requirements under section 604 of the Act (i.e., CFC-13, -111, -112, -211, -212, -213, -214, -215, -216, and -217, carbon tetrachloride and methyl chloroform) based on each company's level of production and import of those chemicals in 1989. It then allocates companies 100 percent of their baseline allowances for carbon tetrachloride and methyl chloroform and 85 percent of their baseline allowances for all the regulated CFCs and Halons for 1991.

Since section 601(6) defines consumption as production plus imports minus only exports to other Protocol parties (in contrast to the Protocol which permits any exports to be subtracted from consumption until January 1, 1993), today's rule also revises the current regulations to provide that additional consumption allowances will be granted only for exports to parties. The rule further provides for the shift in control periods from July 1990 through June 1991 under the Protocol and current regulations to January through December 1991 as specified by section 604. Finally, it adds recordkeeping and reporting requirements needed to determine compliance with the limits on newly regulated chemicals and during the revised control period.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: David Lee at (202) 475-7497, Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M Street SW., Washington DC 20460.

ADDRESSES: Information relevant to this notice is contained in Docket A-91-05 which may be viewed at the central Docket Section, South Conference room 4, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR 2, a reasonable fee may be charged for photocopying.

SUPPLEMENTARY INFORMATION:

I. Background

A. Ozone Depletion

Stratospheric ozone shields the earth's surface from dangerous ultraviolet radiation. A national and international consensus exists that CFCs and Halons deplete stratospheric ozone. To the extent depletion occurs, penetration of UV-B radiation increases, resulting in potential health and environmental harm including increased incidence of certain skin cancers and cataracts, suppression of the immune response system, damage to crops and aquatic organisms, increased formation of ground-level ozone and increased weathering of outdoor plastics.

B. 1987 Montreal Protocol

EPA evaluated the risks of ozone depletion and published its findings in "Assessing the Risks of Trace Gases That Can Modify the Stratosphere" (EPA, 1987). Based upon the Agency's risk assessment work, the Administrator concluded that an international approach was necessary to safeguard the ozone layer. EPA helped conduct a series of international workshops on the causes and effects of ozone depletion, and negotiate an international agreement to control ozone-depleting substances. In September 1987, the United States and 22 other countries signed the Montreal Protocol on Substances that Deplete the Ozone Layer.

As noted above, the Protocol requires nations who join to limit their production and consumption of specified ozone-depleting substances (controlled substances). It does not place limits on each of the substances, but instead groups the substances (e.g., the five most ozone-depleting CFCs are Group I and the Halons are Group II) and places separate limits on the total ozone depletion potential (ODP) of each group. The Protocol thus allows a nation to change the mix of controlled substances within each group that it produces and consumes, so long as the total ODP of the mix does not exceed the specified limits. The phrase "calculated level" is used to refer to this weighting of controlled substances based on their relative ODP.

As originally drafted, the Protocal called for annual production and consumption of the most ozone-depleting CFCs (i.e., CFC-11, -12, -113, -114, and -115) and Halon-1211, -1301 and -2402 to be frozen at 1986 levels beginning July 1, 1989 and January 1, 1992, respectively, and for the CFCs to be reduced to 50 percent of 1986 levels by 1998. It also allowed for limited increases in production beyond the caps described above for the purposes of supplying developing country parties that are operating under Article 5 of the Protocol or trading allowable levels of production ("industrial rationalization") between parties. In addition, it provided that after January 1, 1993 only exports to parties would be subtracted from a party's consumption, and it banned

[1] The original regulations were published on August 12, 1988 at 53 FR 30566. Several minor revisions of the rule have since been issued on Feb. 9, 1989 (54 FR 6376), April 3, 1989 (54 FR 13502), July 5, 1989 (54 FR 28082), July 12, 1989 (54 FR 29337) February 13, 1990 (55 FR 5005), June 15, 1990 (55 FR 24490) and June 22, 1990 (55 FR 25812).

imports of controlled substances from nations which neither join nor comply with the Protocol.

C. Implementing Regulations

EPA promulgated regulations implementing the requirements of the 1987 Protocol through a system of tradable allowances. The Agency assured compliance with the Protocol by creating production and consumption allowances equal to the quantity of production and consumption allowed under the Protocol. The Protocol's separate treatment of Group I and Group II controlled substances was reflected in separate allowances for each group of substances. Similarly, the Protocol's application of limits to the ODP of the groups of controlled substances ("calculated level") was carried over into the definition of allowances. Thus, allowances were specified in terms of calucalated level of a particular group of controlled substances, so that holders of allowances could select any mix of controlled substances within each group, provided that the total calculated level of the mix did not exceed the calculated levels of the allowances held.

EPA apportioned allowances to producers and importers of controlled substances based on their 1986 levels of production and imports. It then allocated the allowances according to the schedule specified in the Protocol. (For example, for the control periods during which CFC production and consumption were to be frozen, EPA allocated 100 percent of baseline allowances.) To reflect the interrelationship of the production and consumption limits, the Agency provided that a producer needed both production and consumption allowances to produce these chemicals (since production counted against both production and consumption limits), while importers needed only consumption allowances to import (since imports counted only against consumption).

EPA's regulations also provided that exporters could receive additional consumption allowances for controlled substances exported to any nation before January 1, 1993 or to any other Protocol party beginning January 1, 1993. Producers could receive additional production allowances for exporting controlled substances to developing country parties to the Protocol or upon the transfer of production rights from another party to the Protocol. Allowances could also be traded in accordance with the regulations.

D. London Amendments to the Protocol

Since the Protocol was signed in 1987, additional scientific evidence became available indicating that depletion of the stratospheric ozone layer was occurring more quickly than had been anticipated. In response to this evidence, the parties to the Protocol at their meeting in London in 1989 decided to require a phase-out of the already regulated CFCs and Halons, and to add other ozone-depleting chemicals to the coverage of the Protocol.

Specifically, the parties adopted an adjustment to the Protocol that requires a phase-out of the already regulated CFCs and Halons by January 1, 2000. As an adjustment, the phase-out requirement is automatically binding on all the parties to the Protocol. The parties also adopted amendments requiring a phase-out of carbon tetrachloride and all other fully-halogenated CFCs by January 1, 2000, and of methyl chloroform by January 1, 2005. As amendments, these requirements will bind only those parties that ratify them.

Beyond that, the parties shifted the control periods during which control requirements apply from July of one year through June of the following year to the calendar year, beginning with the 1993 control period. They provided for an 18-month transitional control period from July 1, 1991 to December 31, 1992, during which parties would be obligated to limit their production and consumption of the already regulated CFCs and Halons to 150 percent of baseline levels. (The controls on the newly regulated chemicals do not take effect until 1993.)

The parties also passed a nonbinding resolution regarding the use of hydrochlorofluorocarbons (HCFCs) as interim substitutes for CFCs. Partially halogenated HCFCs add much less chlorine to the stratosphere than fully halogenated CFCs, but still pose some threat to the ozone layer. The resolution calls for the use of HCFCs only where other alternatives are not feasible, with a phaseout by 2020 if feasible and no later than 2040 in any case.

E. Clean Air Act Amendments of 1990

Congress included in the Clean Air Act Amendments of 1990 requirements for controlling ozone-depleting substances more stringent than those contained in the revised Montreal Protocol. For the substances covered by the revised Protocol's control measures, title VI of the amendments calls for deeper interim reductions and, in the case of methyl chloroform, an earlier phaseout date (2002 instead of 2005). For the HCFCs, title VI requires use restrictions, a production freeze in 2015 and a phaseout in 2030. It also includes provisions designed to further reduce emissions of all ozone-depleting substances through requirements for recycling and safe disposal, limits on use and emissions, bans on nonessential products, and mandatory labeling.

II. Today's Rule

A. Scope

Today's rule implements only the limits on production and consumption of ozone-depleting substances applicable in 1991 under section 604 of title VI. In a rulemaking soon to follow EPA will implement the limits applicable in later years. In separate rulemakings, EPA will implement the other provisions of title VI, including recycling and disposal requirements, emission and use limits, products bans and labeling.

EPA believes it is necessary to promulgate implementing regulations today for the 1991 production and consumption limits because section 604 calls for those limits to take effect January 1, 1991. As detailed below, title VI establishes a comprehensive regime for phasing out production and consumption of ozone-depleting substances to be implemented mostly through regulations. However, section 604 of the title makes the production limits self-effectuating. Procedures are consequently bound by the limits whether or not EPA promulgates implementing regulations, including baseline levels against which compliance with the limits are to be measured. At the same time, section 604 does not make the consumption limits self-effectuating, although it specifies that the consumption limits are to be subject to the same schedule as applies to the production limits. Other provisions integral to the phaseout regime also require regulations to take effect. EPA believes that implementing regulations are necessary to ensure that the 1991 limits on production and consumption are achieved. The Agency, however, has found it impossible to promulgate regulations through notice and comment rulemaking in the two-month period since enactment of the 1990 Amendments. The Agency thus finds it appropriate to promulgate implementing regulations today without providing notice and an opportunity for public comment. The regulations will be effective only during 1991, and the Agency will undertake a notice-and-comment rulemaking to implement the limits applicable in later years.

1. Title VI phaseout provisions. Title VI provides for the phase-out of ozone-depleting substances through a number of interlocking provisions. Section 602 directs EPA within 60 days of enactment of the 1990 amendments to issue two lists of ozone-depleting chemicals. One list is to include the chemicals already regulated under the Protocol and EPA's regulations (i.e., the five CFCs and three Halons), as well as the chemicals to be regulated under the revised Protocol (i.e., all other fully halogenated CFCs, carbon tetrachloride and methyl chloroform). The chemicals on that list are collectively called "class I" substances. The second list is to include all the HCFCs, referred to as "class II" substances. For each of the chemicals listed, EPA must also assign an ozone depletion potential, a chlorine or bromine loading potential, an atmospheric lifetime and, within one year of enactment, a global warming potential.

Section 604(a) makes it unlawful for any person to produce any class I substance in an annual quantity greater than the specified percentages of the quantity of the substance produced by that person in the baseline year (i.e., 1986 for the already regulated chemicals and 1989 for the newly regulated chemicals). As noted above, the provision is self-effectuating. The first control period in the reduction schedule is January through December 1991, and entails a freeze for carbon tetrachloride and methyl chloroform and a 15 percent reduction for the remaining class I substances.

Section 604(c) calls for EPA to promulgate within 10 months of enactment regulations to implement the production controls described above and to "insure" that United States consumption of the regulated chemicals is reduced on the same schedule as applies to production. As mentioned above, section 601(b) defines consumption as production plus imports minus exports to parties. Again, until EPA promulgates regulations implementing the consumption limits, those limits are not binding.

Section 607 requires EPA to promulgate within 10 months of enactment rules "providing for issuance of allowances" for production and consumption of class I and II substances and governing the transfer of allowances. The transfer rules are to require that each trade result in less overall production or consumption than would have occurred absent the trade.

Section 604(d) authorizes EPA to permit, after notice and opportunity for comment, production in excess of the limits for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Any additional production authorized under the provision must be solely for the purpose of supplying the basic domestic needs of such countries.

Section 616 requires EPA to promulgate within two years of enactment regulations authorizing trades of allowable levels of production with other parties to the Protocol. The regulations are to require, among other things, that trades do not result in more production than would have otherwise occurred.

Finally, section 614(b) addresses the relationship between the statute and the Protocol, stating that "in the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." It also provides that the title "shall not be construed, interpreted or applied to abrogate the responsibilities of the United Sates to implement fully the provisions of the Montreal Protocol."

2. Title VI phaseout versus current regulations. While the phaseout requirements established by title VI are in many ways similar to those created by EPA to implement the Montreal Protocol, they differ in several important respects. First, section 604 provides that the reduction requirements are to be accomplished over the course of the calendar year. The current regulations, however, mirror the 1987 Protocol's July-through-June control periods. Moreover, the revised Protocol retains the current control period of July 1, 1990 to June 30, 1991, and provides that the next control period will extend 18 months from July 1, 1991 to December 31, 1992.

Second, while the regulations allow exports to any country to be subtracted from consumption prior to 1993, section 601(6) defines consumption as production plus imports minus exports to parties.

Third, section 604 makes the production limits applicable to each substance separately, not to groups of substances as in the current regulations. Thus, producers cannot change the mix of chemicals they produce unless they trade between chemicals in accordance with applicable regulations.

Fourth, while section 607 provides for trading between chemicals and persons, it states that the regulations "shall insure" that any trade result in less overall production or consumption than would have otherwise occurred. Current regulations provide for trading and do not require that trading result in any additional environmental benefit.

Fifth, section 616 permits production allowances to be traded with other Protocol parties, but only to the extent that allowances being traded are not allowances that otherwise would have gone unused. Current regulations permitting international trades do not include any such condition.

Sixth, section 604(e) authorizes EPA to permit production in excess of the specified limits solely for export to, and use in, developing countries that are operating under Article 5 of the Protocol. Moreover, any such additional production must be solely for the purposes of satisfying the basic domestic needs of the developing country that imports it. EPA's current regulations provide authorization for excess production upon proof of export to developing countries.

In the case of most of the differences just noted, the title VI provisions entail more control or reductions than their counterparts in the Protocol and current regulations. Since section 614 provides that the most stringent of the applicable provisions under the Protocol and title VI governs, the differing title VI provisions just described appear to govern. However, compliance with the limits applicable under the Protocol to the current July 1990 through June 1991 control period must still be assured.

3. Dilemma for 1991. Although title VI provides for a more stringent control regime than EPA's current regulations or even the revised Protocol, only its production limits are self-effectuating. At the same time, under section 163, the general savings clause of the 1990 amendments, EPA's current regulations remain in effect "except to the extent otherwise provided under this Act, inconsistent with any provision of this Act, or revised by the Administrator." Since the production limits of title VI are more stringent than EPA's regulations and do not require regulations to take effect, the savings clause may not save the production limit portions of EPA's regulations. The consumption limits and other aspects of EPA's regulations, however, remain in effect.

EPA believes that allowing the production limit to take effect in 1991 without implementing regulations and disassociated from the consumption limits applicable under current regulations would pose several serious problems. First, it might result in noncompliance with the Montreal Protocol. As described above, the current control period under the Protocol and EPA regulations runs from July 1990 through June 1991 and entails a freeze of the already regulated chemicals. However, the control periods under section 604(a) run from January through December. If EPA's regulatory limits on

production are not saved, producers could conceivably comply with section 604(a)'s 85 percent cap on the already regulated chemicals and still exceed the Protocol's 100 percent cap for those chemicals depending on the amount they produced from July through June.

To illustrate, assume the United States' currently applicable production limit under the Protocol is 1000 units. Under the current regulations, 1000 production allowances would have been allocated and could be expended any time from July 1990 through June 1991. Under section 604(a), production is reduced to 85 percent of baseline levels or 850 units, which may be produced any time from January through December of 1991. Thus, producers could have produced up to 1000 units from July through December of 1990, and under section 604(a) could produce up to 850 units from January through June. Producers could thus distribute their production in such a way as to stay within the limits of section 604(a) but exceed the 1000 unit cap imposed by the Protocol for July 1990 through June 1991.

The Montreal Protocol's consumption limit for the current control period could also be exceeded. If the production limits of EPA's current regulations are no longer effective, the regulations provide for allocation of only consumption allowances equal to allowable consumption, or production plus imports minus exports. Under the current regulations, consumption allowances as well as production allowances must be expended to produce since production counts against the consumption limit as well as the production limit. But if the regulations governing production are no longer effective, the only remaining permissible use for the consumption limits will be to authorize imports. If the consumption allowances allocated by the current regulations are used only for imports, the United States could exceed the currently applicable 100 percent cap on consumption.

To illustrate, assume that the United States' production limit under the Protocol for the current control period is 1000 units and its consumption limit is also 1000 units. (In fact, the United States' CFR production limit is greater than its consumption limit, since in the baseline year for the CFR controls, the United States was a net exporter of those chemicals.) Under EPA's regulations, 1000 production and 1000 consumption allowances would have been allocated for the control period. Assume 500 production allowances, and thus at least 500 consumption allowances, are used by January 1, 1991. If the production provisions of EPA's rules are no longer in effect, the remaining 500 production allowances would no longer be available for production but the remaining 500 consumption allowances would still be available for imports. At the same time, producers would be permitted under section 604(a) to produce up to 85 percent of their baseline amount, or 850 units, from January through December of 1991. If, for example, the 500 consumption allowances remaining under EPA's regulations are used for imports and producers produce anything in the first half of 1991, the United States could exceed the Protocol's consumption limit because it would have already produced 500 units and imported 500 units during the control period. In terms of the consumption equation, the United States would have over 500 units of production plus 500 units of imports or more than 1000 units of consumption; only if the United States exported the amount by which it would otherwise exceed its 100-unit cap would it remain in compliance. EPA's regulations, however, would not assure that sufficient exportation took place.

There are other problems with allowing the 1991 production limits to take effect without implementing regulations. The limits are defined in terms of a percentage of the total amount of a person's production during a baseline year. However, each producer's baseline level of production would not be determined before much of the 1991 control period had passed. Section 603 provides that baseline information for class I chemicals is to be submitted to EPA with the first quarterly reports (due in about June) if it has not already been sent to EPA. In the case of the already regulated CFCs and Halons, EPA has baseline information. But for carbon tetrachloride, methyl chloroform and the other fully halogenated CFCs, it does not. For those chemicals EPA will have to verify any baseline information submitted by producers to ensure that it has not been inflated in order to increase the amount it may continue to produce under the reduction schedule. Until EPA determines what baseline amount is supported by submitted information, a producer cannot be sure what baseline applies to it. By contrast, EPA promulgated the currently applicable baselines prior to the start of the first control period under the Protocol.

Beyond that, if producers must comply with the production limits without regulations permitting trading between chemicals and persons, they will not be able to respond to changes in the market. Specifically, producers will be prohibited under section 604(a) from making a mix of CFCs and Halons different from what they produced in 1986. Yet the market has already undergone significant changes as the current regulatory regime and excise taxes on ozone-depleting substances have driven up the price of the substances. Some users of some chemicals have no preferable alternative and so have been willing to pay higher prices for those chemicals. Other users of those or other chemicals have been forced by the higher prices to conserve, recycle or shift to cheaper substitute substances or processes where possible. As a result of this market dynamic, the regulated chemicals are now made in different relative amounts then they were in 1986. If producers must comply with the limits of section 604(a) on a chemical-by-chemical basis, they will not be able to accommodate these and any other changes in the market to produce the highest value CFCs or Halons without increasing the total ozone depletion potential represented by their production.

In the same vein, if a producer cannot trade its allowances with other persons, other market inefficiencies would result. Several companies that produced the regulated substances in the baseline year no longer produce those substances. If they are unable to trade their allowances to remaining producers, needless shortages might result. Trading also permits producers to take advantage of any economic efficiencies that such trading might accomplish.

Similarly, if producers must comply with the section 604(a) limits without regulations permitting increased production for exports to developing country Protocol parties, the purpose behind the Protocol provision allowing such increases will be frustrated. The Protocol provides a 10-year grace period for developing country parties during which the otherwise applicable control requirements do not apply to them. However, the parties were concerned that with developed countries required to reduce their production, developing country parties might be forced to build their own CFC and Halon production facilities to supply their needs during the grace period. The parties decided to allow developed countries to increase their production to supply these needs rather than face the prospect of multiplying facilities for the production of chemicals that destroy stratospheric ozone.

Another problem mentioned earlier is that without implementing regulations the section 604(c) consumption limits do not take effect. Congress sought to have consumption controlled on the same schedule as production. Yet if regulations implementing the consumption limits are not promulgated until 10 months after enactment (i.e., September 15, 1991) as section 604(c) provides, it is not clear that EPA could impose the consumption limit applicable to 1991; importers, for example, could have already exceeded the limit in the months prior to the rules' promulgation.

4. Regulations implementing 1991 limits. EPA believes Congressional intent and the public interest can best be served by promulgating today regulations that implement the 1991 production and consumption limits of section 604. As explained above, regulations implementing the 1991 limits are needed to ensure United States compliance with the Montreal Protocol, the workability and fairness of the production limits and the achievement of the consumption reductions Congress sought to obtain during 1991.

EPA is not, however, implementing every aspect of title VI's regime for phasing out class I substances. The provisions it does implement specify in detail what controls Congress sought; for example, section 604(a) sets forth the production limits applicable to the different chemicals in 1991. The provisions it does not implement are less specific, requiring the Administrator to make discretionary judgments as to how best to implement Congress' more broadly stated objections. To implement such provisions EPA requires more time than is available prior to the start of the first control period to identify and evaluate potential options. The discretionary nature of the decisions EPA must make with regard to implementing such provisions also makes it more important that the public have prior notice and an opportunity to comment before the EPA makes its decision.

In brief, the regulations promulgated today revise EPA's current regulations by adding baselines for the newly regulated chemicals, allocating production and consumption allowances for all the regulated chemicals equal to the allowable production and consumption under section 604, and making conforming changes to the current regulations to reflect the change in the definition of consumption and the shift in control periods. Those changes are described in detail below in the section of this notice entitled "Section-by-section analysis."

Today's rule, however, does not apply the production limits of section 604 to each class I chemical. For 1991 only, it instead allocates allowances for the groups of class I chemicals specified by section 602(a). As in current regulations, the allowances are in terms of calculated level of, or the total ozone depletion potential allowable from, production of chemicals in each of the groups. EPA has taken this approach because of its related decisions not to implement title VI's trading provision for 1991.

As described above, section 617 provides for trading between chemicals as well as between persons in accordance with regulations to be promulgated by the Administrator within 10 months of enactment. It requires that the regulations "insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions." It does not specify, however, the amount by which transactions should increase total reductions.

Implementing section 617 will present EPA with at least two difficult issues to resolve. First, the Agency must determine how to implement the requirement that transactions yield a net environmental benefit. Specifically, it will have to consider and decide how much environmental benefit any transaction could and should yield. Since the statute provides virtually no guidance on the issue, it will be incumbent on EPA to be searching in its own identification and assessment of possible alternatives. The Agency will also have to consider ways of structuring the requirement that will minimize potential avoidance of it.

Second, EPA will have to consider what procedures are appropriate for processing trades. Its current regulations were designed when the only trades contemplated were between persons. Since the section 604(a) production limits apply to each of the regulated chemicals, producers that want to change the mix of chemicals they make will have to undertake trades between chemicals. As noted above, market demand has already changed significantly for the individual chemicals, so EPA anticipates that producers will want to make trades between chemicals. Further, while producers may have a rough estimate of the relative amount of chemicals they will produce in a given year, changes in demand can occur at any time, and producers will likely need to make trades on an ongoing basis to respond to those changes. In short, EPA believes that significantly more trading will occur once producers are faced with chemical-specific allowances. The Agency is not certain that its present trading procedures could adequately accommodate a significant increase in transactions.

EPA is in the process of developing options for addressing the two issues discussed above, along with others raised by the requirements of section 617. However, more time and effort is needed before the Agency can decide what to propose, much less promulgate. In view of the breadth of options potentially available, there is also a greater role and need for public participation in shaping the eventual regulatory program.

Consequently, EPA is not in a position to promulgate today regulations implementing the trading requirements of section 617. Instead, it is leaving in place the current trading rules for 1991 only. Because the current rules do not address and therefore could not accommodate interpollutant trades, EPA is also not implementing the chemical-specific aspect of the production limits under section 607(a). Instead, for the already regulated chemicals, the Agency is leaving in place the current baseline apportionments, which are in terms of calculated levels of production or consumption of specific groups of chemicals. For the newly regulated chemicals the Agency is promulgating baseline apportionments which are also on a group calculated level basis. These apportionments will be effective for 1991 only.

EPA recognizes that Congress intended that each chemical be subject to the production limits and that, pursuant to trading regulations promulgated by EPA, any change in the mix of chemicals produced yield an environmental benefit. However, EPA also believes that Congress did not intend the production limits to take effect without provision for producers to change their mix of chemicals. Congress itself specified that regulations implementing the limits and the trading provision be promulgated by the same date (10 months from enactment) and the legislative history of the provisions indicates that Congress contemplated that trading would be permissible when the limits took effect. Ideally, EPA would promulgate regulations implementing the production limits of section 604(a) and the trading requirements of section 617 at the same time. But as explained earlier, the production limits take effect less than

two months after the amendments' enactment; EPA simply cannot complete the work needed to devise and promulgate adequate trading rules in that amount of time. Under these circumstances, EPA believes Congressional intent is best served by promulgating rules that impose the limits of section 604(a) on the groups of chemicals specified until the Agency can issue regulations that provide for interpollutant trades.

For similar reasons, EPA is not implementing for 1991 the provisions relating to trades between Protocol parties. Section 616 authorizes trades with other parties provided that "the Administrator establishes revised production limits for the United States [where United States production rights are being transferred to another party] such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted of the substance or substances concerned * * * under the Protocol minus the production allowances transferred, (B) the maximum production level permitted * * * under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level * * * for the 3 years prior to the transfer minus the production allowances transferred." The section authorizes the United States to receive production rights from other parties so long as "the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States * * *."

Section 616(c) gives EPA two years from enactment to promulgate rules implementing the section, with good reason. The section's requirements regarding the adjustment of production allowances will entail data collection and analysis not now done, and its requirements regarding other nations' adjustment of their production limits are unparalleled in EPA's experience. In short, EPA cannot devise even an interim program for implementing the provision in the time available. At the same time, EPA believes Congress intended that international trading continue to be available rather than be foreclosed until EPA promulgates regulations implementing section 616. Therefore, the Agency finds it appropriate to retain for 1991 only the current regulatory provisions authorizing and governing international trades.

EPA is also not revising at this time its regulations authorizing additional production for the purpose of exports to developing country parties to the Protocol. Section 604(e) provides for such additional production "solely for export to, and use in, developing countr[y]" parties to the Protocol, and specifies that "[a]ny production authorized under this paragraph shall be solely for the purposes of satisfying the basic domestic needs of such countries." It is not clear what, if any, requirements this section imposes different than or in addition to its Montreal Protocol counterpart, which EPA has already implemented through regulations. To the extent its implementation requires EPA to insure appropriate use of chemicals in other countries, however, it will present another challenge unparalleled in the Agency's experience. In the few weeks before the production limits take effect, EPA cannot devise a program that involves oversight or intervention in activities undertaken in another country.

The important policy objectives underlying the Protocol provision for increased production for developing countries argue against rescinding current regulations implementing the provision until EPA promulgates regulations under section 604(e) itself. As explained earlier, the parties did not want developing countries to have to build new facilities for producing ozone-depleting substances in order to supply their relatively modest domestic needs as developing countries' production shrank. In part to obviate the need for new production facilities, they decided to permit developed countries to exceed their production caps to supply developing countries. Congress, in adopting this provision, assumedly shared the parties' concern. In light of these circumstances, EPA believes that rescinding the current regulations authorizing the additional production before promulgating replacement regulations would be inconsistent with Congressional and international policy. The Agency will thus address how the current regulations should be revised in light of section 604(e), if at all, in the upcoming rulemaking.

Overall, EPA believes that today's regulation implements the core of what Congress sought to achieve in 1991: A freeze in the production of newly regulated chemicals and a 15 percent reduction of the already regulated chemicals. If EPA did not promulgate these regulations, the reductions in ozone-depleting substances that the limits require probably would not be fully or even largely achieved. Those provisions EPA has not implemented for 1991 could have added marginally to the reductions achieved. But the Agency could not implement every provision, even on an interim basis, in the few weeks available to revise its regulations. Instead, it decided to invest its efforts in ensuring that the major reductions sought for 1991 will be accomplished. Today's rules do that.

5. Shift in Control Periods. As described earlier, the control periods under section 604(a) do not synchronize with the control periods under the current regulations implementing the 1987 Protocol. With the revised Protocol providing for calendar year control periods starting 1993, this lack of synchronization occurs only during 1990 through 1992. Though short-lived, the difference in control periods nonetheless must be reconciled if the United States is to remain in compliance with the Protocol and the production limits made effective by section 604(a) are to be met.

A preceding section of this notice explained the way in which the difference in control periods could result in noncompliance with the Protocol. To summarize, unless producers continue to be subject to the requirement that their production from July 1, 1990 through June 30, 1991 not exceed 100 percent of baseline levels, they could distribute their production in 1991 in such a way as to exceed the limit. Indeed, given that the greatest demand for CFCs occurs during the summer months, producers might produce much of their 85 percent allowance in the first half of the year, making exceedences of the 100 percent more than a mere possibility.

At the same time, section 604(a) limits 1991 production and consumption to 85 percent of baseline levels in the case of CFCs and Halons, including those covered by the current regulations. Under current regulations, additional production and consumption allowances may be obtained upon proof of export to a developing country or as a result of an international trade. Additional allowances earned in the first half of the current control period, July through December 1990, may be expended during the second half, January through June 1991. However, to the extent allowances earned in 1990 are used in 1991, the 1991 limits under section 604(a) could be exceeded.

To illustrate both problems, assume a total of 1000 production and 1000 consumption allowances have been allocated for the current July-through-June control period, which entails a freeze. From July through December, 500 of each type of allowances are expended, and 100 of each are earned as a result of exports to developing

countries. Beginning with January 1, 1991, producers may not produce more than 85 percent of baseline levels; put in terms of allowances, they have 850 allowances to expend from January through December 1991. If they expend more than 500 of those allowances in the first six months of 1991, the Protocol's current 100 percent or 1000 allowance cap will have been exceeded. If in 1991 they expend all 850 1991 allowances *and* carry over and expend the 100 allowances they earned in the last half of 1990, they will exceed the 85 percent or 850 allowance cap under section 604(a).

To ensure that neither type of exceedence occurs, EPA believes that the current regulations must be revised in two ways. First, the current control period must end December 31, 1990 instead of June 30, 1991, and a new control period running from January 1 through December 31, 1991 must be instituted. Further, when the current control period ends, all unexpended allowances, including actual and potential production and consumption allowances, and *all* authorizations to convert potential production allowances to actual allowances must lapse. Only by starting 1991 with a clean slate can EPA ensure that the regulations do not inadvertently permit an exceedence of the 85 percent limit on CFCs and Halons under section 604(a).

Second, the regulations must prohibit both 1991 production and import from exceeding 85 percent of baseline levels and July 1, 1990 through June 30, 1991 production and import from exceeding of 100 percent of baseline levels. These twin prohibitions will address the need to comply with both section 604(a) and the Montreal Protocol. A similar approach will have to be taken to assure compliance with both the 1992 reduction requirement of section 604(a) and the July 1991 through December 1992 limit of the Montreal Protocol. EPA plans to include such a measure in its proposed regulations for 1992 and beyond.

The Agency regrets the cut off of the current control period and with it any earned but unexpended allowances. EPA officials did review Agency records to determine which companies were likely to be adversely affected by this change in the regulations, and in mid-December notified those companies of the impending change so that they could make use of their earned allowances in the remaining weeks of the year to the extent possible. The self-effectuating nature of the production limits under section 604(a), however, left no alternative; whether or not EPA cut off the current control period, producers could not have relied on allowances earned in 1990 to validate production in excess of 85 percent of their baselines. Beyond that, the interrelationship of production and consumption, as well as Congress' express intent that consumption be subject to the same control schedule as production, made similar treatment of consumption both necessary and appropriate.

It should also be noted that the unexpended allowances that lapse after December 31, 1990 are in the nature of privileges as opposed to rights. The Montreal Protocol places limits on the production and consumption of party nations. As a party, the United States is obligated to abide by those limits. EPA decided to implement the Protocol's limits by distributing the United States' allowable production and consumption among producers and importers through allowances based on their past market shares. This was not a necessary approach to implementing the Protocol, however, and EPA did consider alternative approaches, including auctioning off allowances to the highest bidder. When EPA proposed allocating allowances to past producers and importers, it noted that the allowances were actually privileges and that if circumstances warranted (for example, if the Protocol parties adopted a revised reduction schedule), the Agency would modify the amount of allowances allocated. As it happened, Congress enacted a more stringent reduction schedule, so EPA must revise the allocation of allowances accordingly.

B. Section-by-section analysis

The following is a section-by-section analysis of the changes made to the existing regulations by today's rule.

1. Authority Citation. The citation for the regulations is changed from section 157(b), which was deleted by the 1990 Amendments, to title VI of the Clean Air Act as amended by the Amendments.

2. Section 82.1—Purpose and scope. This section is revised to state the purpose of the regulations is to implement the Montreal Protocol and section 604 of the Clean Air Act.

3. Section 82.2—Effective date and savings provision. The effective date of the regulations is changed to January 1, 1991. EPA selected that date because section 604(a) specifies that the currently applicable production limit takes effect on January 1, 1991. EPA changed the effective date for the regulations as a whole because today's rule implementing section 604(a) revises virtually every section of the regulations.

Use of January 1 as a start date does result in today's rule having retroactive effect for a period of several weeks. EPA believes, however, that retroactive application of the rule will not adversely affect any member of the regulated industry. Under the previously applicable regulations, 100 percent of baseline allowances for CFCs and Halons were allocated for the period of July 1, 1990 to June 30, 1991. Now, half way through that control period, the original allocations are being rescinded, but 85 percent of baseline allowances for CFCs and Halons are being allocated for January through December of 1991. EPA's compliance monitoring records indicate that virtually all companies have used at least 15 percent of their originally allocated baseline allowances. Under today's rule companies are deemed to have held on January 1, 1991 more baseline allowances than they held under the original regulations.

EPA is aware of four companies that under the previous regulations had obtained through trading and exports allowances which under today's rule no longer exist. Since these companies were neither producers nor importers in the baseline year they have not been allocated baseline allowances by today's rule. These companies are particularly hard hit by the change in control periods necessitated by section 604. However, the retroactive aspect of today's rule does not in and of itself add to the adverse effect of the rule on these companies. EPA notified these companies in mid-December that section 604 and this rule would require that the current Montreal Protocol freeze control period end and the new Clean Air Act 15 percent reduction control period begin on January 1, 1991. The companies were thus aware that they had until the end of the year to use their allowances and that the allowances would lapse at the start of the next year.

EPA does not believe that in the few weeks between January 1 and today, any company has produced or imported in excess of the limits established by today's rule. It may be presumed that producers and importers of the regulated substances are aware of the 1990 Amendments limits on their 1991 activities. EPA has informed industry of the limits and their applicability beginning January 1, 1991 through discussions with the Agency's advisory committee on stratospheric ozone regulations and an industry trade group and through letters sent to individual companies. EPA thus believes it highly unlikely that any company will have exceeded its 85 percent or 100 percent allocation (depending on the controlled substance) for 1991 in the first few

weeks of the year. In sum, the retroactive aspect of today's rule should not place any company in jeopardy of noncompliance.

Finally, EPA's records indicate that no trading of allowances under the previous regulations has taken place since January 1, 1991. Consequently, the retroactive effect of this rule should not have a particular adverse effect on any trades.

A savings provision is also added to the section to ensure that enforcement action may still be taken for violations of the regulations in effect prior to January 1, 1991.

4. Section 82.3—Definitions. Several definitions are revised to reflect changes made by title VI. In particular, the terms "import" and "production" are changed to conform to the definitions of those terms under section 601, since both terms are integral to the definition of the limits imposed under section 604. "Control period" is redefined to include only the 1991 control period under section 604 being implemented by today's rule. The definition of other terms are revised to conform to other changes in the regulations, such as changes in citations.

5. *Section 82.5—Prohibitions.* This section is revised so that persons are prohibited not only from producing or importing controlled substances in excess of the calculated level of production and consumption allowances they hold, but also from producing and importing during the period from July 1, 1990 through June 30, 1991 a calculated level of Group I controlled substances (i.e., the already regulated CFCs and Halons) in excess of the limits in effect for that period under the Montreal Protocol. Specifically, the latter cap is implemented by prohibiting any person from producing or importing Group I controlled substances during the first six months of 1991 in excess of the amount of unexpended allowances that person held for those substances under this part on December 31, 1990, and the amount of additional allowances that person is granted or had received in trade for those substances in the first six months of 1991. Together, the unexpended allowances held on the last day of 1990 and the additional allowances earned in the first six months of 1991 are equivalent to the amount of Group I substances that the United States may produce and import in the first six months of 1991 without exceeding the limits applicable during the Protocol's current control period.

6. Sections 82.5 and 82.6—Apportionment of baseline production and comsumption allowances. The purpose of these sections is to establish each company's baseline production and comsumption allowances for each group of controlled substances. For the groups of already regulated controlled substances, the baseline allowances are the same as those previously promulgated. The baseline allowances for the groups of newly regulated controlled substances have been determined by EPA and communicated to affected companies by mail. EPA publishes these allocations in the **Federal Register** after having completed procedural requirements pertaining to information claimed confidential.

To establish baseline allowances for the groups of newly regulated chemicals, EPA obtained information on and documentation of companies' 1989 production, import and export of these chemicals through a request issued under section 114 of the Act on November 26, 1990 (55 FR 49116). Because section 601(11) excludes from the definition of production the amount of a chemcial used and entirely consumed (except for trace quantities) in the production of another chemical, the Agency also requested companies that had consumed or transformed the regulated chemicals as feestock in the manufacture of another chemical to supply information documenting the transformation. Based on this information, the Agency calculated companies' baseline production and comsumption allowances for the groups of newly regulated chemcials specified by section 602 (i.e., Group III—the newly regulated CFCs; Group IV—carbon tetrachloride; and Group V—methyl chloroform). Baseline production allowances were calculated by excluding from the amount of the newly regulated chemicals produced in 1989 the amount of those chemicals transformed in the same year. The Agency attempted to trace every discreet amount of a chemical that had been transformed to the producer of that discreet amount of chemical and exclude that amount from the producer's baseline allowances. In some cases, however, EPA was unable to track the chemical transformed to its original producer. To account for these unassignable amounts of transformed chemicals, EPA applied a correction factor to distribute the unassignable amounts to producers of the relevant chemicals based on their respective market shares.

The Agency believes that this is a fair way of allocating transformation to the producers of these chemicals, with the larger producers receiving the larger share of the credit for documented, but unassignable, transformation. This approach is also consistent with that taken by the Agency in a previous rulemaking apportioning baseline consumption allowances. In that rulemaking, EPA decided that documented, but assignable, exports of the regualted CFCs and Halons should be allocated to producers based on their relative market share. As a result, larger producers had their consumption allowances decreased more than smaller producers.

EPA determined each company's consumption allowances by performing the comsumption equation for each company based on that company's documented production, imports and exports. For the chemicals for which the Agency is establishing baseline allowances in this rule, EPA was able, in most cases, to track all exports back to the exported chemicals' producers. However, it was also necessary to allocate unassignable exports to producers in a manner similar to the method used to allocate unassignable transformation to producers. In addition, since the Protocol as construed by the parties and EPA's rule do not count imports transformed in the manufacture of other substances against applicable consumption limits, the Agency has not counted baseline year imports transformed in the manufacture of other substances in calculating baseline consumption allowances. (*See* 55 FR 24491; June 15, 1990.)

7. Section 82.7—Grant of 1991 allowances for Groups I, II and III controlled substances. This section is revised to allocate allowances only for the 1991 control period. Persons with baseline production and consumption allowances for Group I, Group II or Group III controlled substances are allocated 85 percent of those allowances for 1991, in accordance with the limit applicable under section 604.

8. Section 82.8—Grant of 1991 allowances for Groups IV and V controlled substances. Like § 82.7, this section is also revised to allocate allowances only for the 1991 control period. Persons with baseline production and consumption allowances for Group IV or Group V controlled substances are allocated 100 percent of those allowances for 1991, in accordance with the limit applicable under section 604.

9. Section 82.9—Availability of additional production allowances. This section is revised to grant persons with baseline production allowances for any group of controlled substances potential production allowances for the same group equal to 10 percent of their baseline allowances. Potential production allowances may be

converted to production allowances upon proof of export to a developing country that is operating under Article 5 of the Protocol (§ 82.11) or on receipt of allowable production from another Protocol party (§ 82.9(b)(1)). Other revisions made to this section conform the text to changes in the definition of control period and in citations.

A further revision is made to this section to address a baseline apportionment issue raised for the first time by this rule. The revision permits a company whose total production of a controlled substance in the baseline year either was entirely transformed except for trace quantities by another company into another chemical or exported to petition the Agency for allowances sufficient to continue production of the controlled substance for use in the manufacture of the other chemical. This is a departure from the Agency's past approach to granting allowances but it is necessitated by the particular circumstances of the production and use of some controlled substances in this country.

In devising the regulatory program implementing the Montreal Protocol's control measures, EPA took a conservative approach to granting additional production and consumption allowances. To minimize the chance that the United States would exceed its production limit under the Protocol, for example, EPA provided that the conditions for obtaining additional allowances for transformation of controlled substances had to be fulfilled before EPA would grant those allowances. In other words, a producer had to expend allowances to produce the controlled substance to be transformed and that substance had to be actually transformed into another chemical before EPA would grant additional allowances to replace the original allowances expended to make the substance transformed. Section 602(11) defines production as excluding controlled substances transformed in the manufacture of another chemical. EPA has accordingly figured each company's production baseline by subtracting from its production the amount of its controlled substances that were transformed by any company. (EPA considered subtracting from the transforming companies allowances the amount of controlled substances they had transformed in the baseline year. However, in some cases the transforming companies did not produce the substance that was transformed, so they had no baseline allowances from which to subtract the amount of substance transformed.) In at least one case this approach has meant that a company has not been allocated allowances that would permit it to produce controlled substances in the future. Furthermore, in this particular case the transforming companies have none of the appropriate baseline allowances against which to subtract the controlled substance transformed. EPA thus had no option but to deny the company that produced the controlled substance transformed baseline allowances authorizing future production of the controlled substance.

Under the original regulations, without baseline allowances this company could not have produced the controlled substance even for use in the manufacture of other chemicals, upon proof of which it would have received additional (in effect, replacement) allowances. At the same time, the producers of the chemicals that require the controlled substance for their manufacture have no baseline allowances for the controlled substance of their own. EPA had decided to address this situation by making a limited exception to its policy of requiring that conditions for obtaining additional allowances be met before granting the allowances. In the case of a company that produced in the baseline year a controlled substance that was either entirely transformed by other companies or exported, EPA will grant "additional" production and comsumption allowances for production of that amount of the controlled substance for which the company has a binding contract of sale that requires that the controlled substance sold be transformed in the manufacture of another chemical. This section of today's rule sets up a petition process by which a producer may obtain such allowances.

10. Section 82.10—Availability of additional consumption allowances. In keeping with the section 601(6) definition of consumption as production plus imports minus exports to parties, this section is revised to provide that additional consumption allowances are available only upon proof of exports to parties.

11. Section 82.11—Exports to parties. This section, which governs the granting of authorizations to convert potential production allowances, is revised to conform its text to the change in the definition of control period.

12. Section 82.12—Transfers of allowances. The revision to this section conforms the text to the change in the definition of control period.

13. Section 82.13—Recordkeeping and reporting. The recordkeeping and reporting requirements are made applicable to producers, importers and exporters of all controlled substances as of January 1, 1991, since all controlled substances are subject to section 604 limits. Other revisions are made to conform the text to the change in the definition of control period and to obtain any relevant transformation information for all controlled substances.

III. Statutory Authority

EPA is authorized by section 604(c) of the Act as recently amended to promulgatged regulations implementing the requirements of that section. At the same time, section 614(b) provides that title VI, including section 604, "shall not be construed, interpreted or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol." To the extent that additional or different regulations are needed to ensure compliance with the Protocol, the Administrator may promulgate such regulations under section 615, which provides broad authority to take action needed to protect stratospheric ozone. United States compliance with the Protocol is essential to the protection of the ozone layer. As the Agency has stated in the past, stratospheric ozone depletion is an international problem requiring an international solution. For the Protocol to be effective, the United States must comply, not only to realize the reductions that the Protocol seeks, but to set an example for other countries and make credible the United States' ongoing efforts to persuade other countries to join. Given these statutory provisions, EPA may promulgate today's rule which implements section 604 but also provides for compliance with the Protocol.

Any regulations for the protection of stratospheric ozone are subject to the rulemaking requirements of section 307(d) of the Act as amended (*see* section 710 of the 1990 Amendments). In particular, section 307(d)(3) provides that in the case of any rule to which the subsection applies, notice of proposed rulemaking shall be published in the **Federal Register** and shall specify the period available for public comment. However, section 307(d)(1) makes the subsection inapplicable in the case of any rule or circumstance referred to in subparagraph (A) or (B) of section 553(b) of the Administrative Procedures Act as codified in title 5 of the United States Code. The circumstance referred to in subparagraph (B) is "when the agency for good cause finds (and incorporates

the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."

EPA finds that providing notice and public procedure in the case of today's rule is impracticable and contrary to the public interest. As has been repeatedly pointed out, section 604(a) makes the production limits effective beginning January 1, 1991. Until EPA promulgates the baselines against which compliance with the limits is to be measured, regulated entities cannot be sure what is required of them, and EPA will have difficulty enforcing the requirements against them. Until EPA revises its current regulations, it cannot be sure that the regulations provide for United States compliance with the Protocol's current requirements. And until EPA promulgates implementing regulations, the consumption limits Congress sought for 1991 are not effective.

Congress recently and clearly expressed its strong interest in stringent control of ozone-depleting substances. In light of this interest, there can be little doubt that realization of title VI's 1991 limits on ozone-depleting substances is in the public interest. Further, in light of the United States' obligations under the Protocol and continued strong support of that agreement, there can be little doubt that avoidance of noncompliance with the Protocol's current limits is also in the public interest. EPA believes that today's rule is necessary to ensure compliance with both the limits applicable to 1991 under title VI and the limits applicable to the current control period under the Protocol. If the Agency had waited to promulgate the rule until it had provided notice and an opportunity to comment, the rules would probably have been issued too late to accomplish its important objectives. EPA therefore believes that it would have been impracticable and contrary to the public interest to provide notice and public procedure on this rule.

The Agency appreciates that rules promulgated after notice and opportunity for comment are better for the public's participation in their formulation. It also understands that regulation is more fairly accomplished if the public has an opportunity to participate in rulemaking. EPA has thus limited the period during which today's rule will be effective to 1991, and will propose regulations implementing the rest of the title VI phaseout regime in several months.

The Agency notes that section 307(h), which was added to the Act by section 109(p) of the Amendments, states that "it is the intent of Congress that, consistent with the policy of the Administrative Procedures Act, the Administrator in promulgating any regulation under this Act, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days * * *." EPA does not believe that this new section eliminates the exemption from notice and comment provided by section 307(d)(1) since it left that provision undisturbed. The Agency does believes, however, that the new section makes it incumbent on EPA to cosider Congress' policy directive favoring public participation before it invokes the "good cause" exemption. The Agency has done so, but still finds that the circumstances explained above make it imperative that regulations implementing the 1991 limit be promulgated in a time frame that does not allow for notice and public comment.

For the reasons given for dispensing with notice and comment, the Agency also finds good cause for making today's rule effective immediately. To the extent possible, EPA has already notified regulated and environmental community of the pending rule and of the Administrator's signing of the rule.

IV. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based industry to compete with foreign based enterprises in domestic or export markets.

EPA has determined that this temporary final rule does not meet the criterial of a major rule. The Agency estimates that industry costs for 1991, the only year to which this rule applies, will not exceed $100 million and that price increases will be minimal for CFCs. Price increases are not expected for any of the other regulated chemicals during 1991.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–601 requires that federal agencies examine the impacts on small entities. Under 5 U.S.C. 601(a), whenever an agency is required to publish a general notice of rulemaking, it must prepare and make available a regulatory flexibility analysis (RFA).

The Agency originally published an RFA to accompany the August 12, 1988 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and Halons. The RFA concluded that of the industries affected by regulation of CFCs and Halons only some segments of the foam blowing industry were potentially at risk. In contrast to almost all the other uses of these chemicals, for the foam industry CFCs are a larger percentage of the final costs.

Different sectors of the foam industry are likely to be affected differently. Indeed, the August 12 rule discussed how several foam sectors were already moving away from CFCs. The foam food packagers have shifted out of CFC–11 and CFC–12 to HCFC–22. Similarly, the industry sector that makes flexible molded foam has moved out of CFCs with minimal disruption, while the extruded polystyrene boardstock intend to eliminate the use of CFC–12 in the near future.

In updating this analysis to examine the other foam sectors as well as those sectors using carbon tetrachloride and methyl chloroform, the Agency did re-examine the effect of increased price on several foam segments—polyurethane-sprayed and molded foam and foam insulation and boardstock. The insulating foam industry is investigating the use of HCFC–141b or a blend of HCFC–141b and HCFC–123. To the extent that these substitutes are determined to be technically and economically viable, the longer term impact on these firms will be minimized. The industry is actively pursuing these options and are currently waiting for the results of toxicity studies required in the new use of these chemicals.

Based on the analysis contained in the RFA, EPA does not believe that any foam industry segment will be substantially harmed over the long term, and that recent development of alternative blowing agents for use in these sectors indicate the competitiveness of this industry. Sectors using carbon tetrachloride and methyl chloroform are unaffected due to the small volume of these chemicals used in their applications.

C. Paperwork Reduction Act

As required by § 35.04 of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA has submitted an information collection request to the Office of Management and Budget for review.

The public reporting burden for this collection of information is estimated to average 25 hours per response for producers and 13 hours per response for importers. These estimates include time for reviewing instructions, searching existing data sources, and completing and reviewing instructions, searching existing data sources, and completing and reviewing the collection information. All recordkeeping requirements are considered to be "usual and cutomary" burden defined under 5 CFR 1320.7 and, as such, are not included in the estimate of the respondents burden.

Send comments regarding the burden estimated, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. EPA, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution, Chemicals, Exports, Imports, Reporting and recordkeeping requirements.

Dated: February 8, 1991.

William K. Reilly,

Administrator.

PART 82—PROTECTION OF STRATOSPHERIC OZONE

For the reasons set forth in the preamble, EPA amends 40 CFR part 82 as follows:

1. The authority citation for part 82 is revised to read as follows:

Authority: 42 U.S.C. 7671c, 7671f, 7671n.

2. Section 82.1 is amended by revising paragraph (a) to read as follows:

§ 82.1 Purpose and scope.

(a) The purpose of these regulations is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and section 604 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990, Public Law 101-549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports) of certain ozone-depleting chemicals according to specified schedules. The Protocol also requires each nation that becomes a party to the agreement to impose certain restrictions on trade in ozone-depleting substances with nonparties.

* * * * *

3. Section 82.2 is revised to read as follows:

§ 82.2 Effective date and savings provision.

(a) The regulations under this part take effect January 1, 1991.

(b) The regulations under this part were effective prior to January 1, 1991 are saved for purposes of enforcing the provisions that were applicable prior to January 1, 1991.

4. Section 82.3 is amended by revising paragraphs (f), (g), (k), (m), (r) and (s) and by revising the last sentence of paragraphs (e) and (f) to read as follows:

§ 82.3 Definitions.

* * * * *

(e) *Consumption allowances* * * *. A person's consumption allowances are the total of the allowances he obtains under § 82.7 (1991 allowances for Group I, Group II and Group III controlled substances), § 82.8 (1991 allowances for Group IV and Group V controlled substances) and § 82.10 (additional consumption allowances), as may be modified under § 82.12 (transfer of allowances).

(f) *Control period* means the period from January 1, 1991 through December 31, 1991.

(g) *Controlled substance* means any substance listed in appendix A to this part, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a listed substance which is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a controlled substance. Controlled substances are divided into five groups, Group I, Group II, Group III, Group IV, and Group V, as set forth in Appendix A to this part.

* * * * *

(k) *Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning or the customs laws of the United States.

* * * * *

(m) *Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

* * * * *

(r) *Potential production allowances* means the production allowances obtained under § 82.9(a).

(s) *Production* means the manufacture of a substance from any raw material for feedstock chemical, but such terms do not include:

(1) The manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(2) The reuse or recycling of a substance. Production includes spilling or venting of controlled substances equal to or in excess of one hundred pounds per event; however, each production plant is allowed two spills or ventings of less than 1,000 pounds within a given control period.

(t) *Production allowances** * *. A person's production allowances are the total of the allowances he obtains under § 82.7 (1991 allowances for Group I, Group II and Group III controlled substances), § 82.8 (1991 allowances for Group IV and Group V controlled substances), and § 82.9 (b), (c) and (d) (additional production allowances).

* * * * *

5. Section 82.4 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 82.4 Prohibitions.

(a) No person may produce, at any time in the control period, a calculated level of controlled substances in excess of the amount of unexpended production allowances held by that person under the authority of this part at that time for the control period. In no event may any person produce in the first six months of the control period a calculated level of Group I controlled substances in excess of the total of:

(1) The unexpended production allowances (including authorizations to convert potential production allowances) for Group I controlled substances that the person held under the authority of this Part on December 31, 1990; and

(2) Any additional production allowances (including authorizations to convert potential productions allowances) for Group I controlled substances that the person was granted in the first six months of the control period under §§ 82.9 (b) and (c) for the Montreal Protocol period of July 1, 1990 through June 30, 1991 and § 82.11.

Every kilogram of such excess constitutes a separate violation of this regulation.

(b) No person may produce or import, at any time in the control period, a calculated level of controlled substances in excess of the amount of unexpended consumption allowances held by that person under the authority of this Part at that time for the control period. In no event may any person produce or import in the first six months of the control period a calculated level of Group I controlled substances in excess of the total of:

(1) The unexpended consumption allowances for Group I controlled substances that the person held under the authority of this part on December 31, 1990; and

(2) Any additional consumption allowances that the person was granted under § 82.10 in the first six months of the control period.

Every kilogram of such excess constitutes a separate violation of this regulation.

* * * * *

(d) Beginning January 1, 1991, no person may import any quantity of controlled substances from any nation not listed in appendix B to this part (Parties to the Montreal Protocol), unless that nation is listed in appendix C to this part (Nations Complying with, But Not Party to, the Protocol). Every kilogram of controlled substances imported in contravention of this regulation constitutes a separate violation of this regulation.

6. Section 82.5 is amended by revising the introductory text and by adding paragraphs (c), (d), and (e) to read as follows:

§ 82.5 Apportionment of baseline production allowances.

Persons who in 1986 produced one or more controlled substances included in Group I or Group II or who in 1989 produced one or more controlled substances included in Group III, Group IV or Group V are apportioned calculated levels of baseline production allowances as set forth in this section. Each person's apportionment of production allowances for Group I or Group II controlled substances is equivalent to the calculated level of that person's production of Group I or Group II controlled substances in 1986. Each person's apportionment of production allowances for Group III, Group IV or Group V controlled substances is equivalent to the calculated level of that person's production of Group III, Group IV or Group V controlled substances in 1989.

* * * * *

Person	Calculated levels (kg)
(c) For Group III controlled substances:	
ATOCHEM North America	3992
E.I. DuPont de Nemours & Co	456550
Great Lakes Chemical Corp	56361
LaRoche Chemicals	29025
(d) For Group IV controlled substance: [1]	
AKZO Chemicals, Inc	14448047
Dow Chemical Company, USA	28846451
E.I. DuPont de Nemours & Co	10077
Hanlin Chemicals—WV, Inc	245368
ICI Americas, Inc	954066
Occidental Chemical Corp	745085
Vulcan Chemicals	22282806
(e) For Group V controlled substances:	
Dow Chemical Company, USA	16772249
PPG Industries, Inc	5748355
Vulcan Chemicals	8973453

[1] Additional baseline allowances may be obtained under § 82.9(e).

7. Section 82.6 is amended by revising the introductory text and by adding paragraphs (c), (d), and (e) to read as follows:

§ 82.6 Apportionment of baseline consumption allowances.

Persons who in 1986 produced, imported, or produced and imported one or more controlled substances included in Group I or Group II or who in 1989 produced, imported, or produced and imported one or more controlled substances included in Group III, Group IV or Group V are apportioned calculated levels of baseline consumption allowances as set forth in this section.

* * * * *

Person	Calculated levels (kg)
(c) For Group III controlled substances:	
ATOCHEM North America	3983
E.I. DuPont de Nemours & Co	426865
Great Lakes Chemical Corp	56254
ICI Americas, Inc	5087
LaRoche Chemicals	28960
National Refrigerants, Inc	17097
(d) For Group IV controlled substances: [1]	
Dow Chemical Company, USA	35217314
E.I. DuPont de Nemours & Co	62052
Hanlin Chemicals—WV, Inc	244669
ICI Americas, Inc	2022743
Occidental Chemical Corp	742961
(e) For Group V controlled substances:	
3V Chemical Corp	354
Actex, Inc	5030
ATOCHEM North America	7454
Dow Chemical Company, USA	12565757
IBM	203
ICI Americas, Inc	1486401
PPG Industries, Inc	4540222
Unitor Ships Service, Inc	689
Vulcan Chemicals	7099065

[1] Additional baseline allowances may be obtained under § 82.9(e).

8. Section 82.7 is revised to read as follows:

§ 82.7 Grant of 1991 production and consumption allowances for Group I, Group II and Group III controlled substances.

For the control period, every person is granted 85 percent of the baseline production and consumption allowances apportioned to him for Group I, Group II, and Group III controlled substances under §§ 82.5 and 82.6.

9. Section 82.8 is revised to read as follows:

§ 82.8 Grant of 1991 production and consumption allowances for Group IV and Group V controlled substances.

For the control period, every person is granted 100 percent of the baseline production and consumption allowances apportioned to him for Group IV and Group V controlled substances under §§ 82.5 and 82.6.

10. Section 82.9 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), redesignating paragraph (d) as (c), and redesignating paragraph (e) as (d), and adding paragraph (e). In newly redesignated (b)(2) introductory text, revise the reference "(c)(1)" to read "(b)(1)". In newly redesignated (b)(3), revise the reference "(c)(1)" to read "(b)(1)" and the reference to "(c)(2)" to read "(b)(2)". Revise paragraph (a); revise the second sentence of newly redesignated (b)(1) introductory text; revise newly redesignated (b)(1)(v); revise the second sentence of the newly redesignated (c)(1); revise newly redesignated (c)(2)(v); revise the last sentence of newly redesignated (d) introductory text, and the first sentence of (d)(3).

§ 82.9 Availability of production allowances in addition to baseline production allowances.

(a) For the control period, every person apportioned baseline production allowances for one or more groups of controlled substances under § 82.5 is also granted a calculated level of potential production allowances equivalent to 10 percent of his apportionment for each group of controlled substances under § 82.5.

(b) * * *

(1) * * * For trades from a Party, the person must obtain from the principle diplomatic representative in that nation's embassy in the United States a document stating that the nation agrees to reduce its allowable calculated level of production by the amount being transferred to the recipient for the Montreal Protocol periods to which the transfer applies (either July 1, 1990, through June 30, 1991, or July 1, 1990 through December 31, 1992, or both). The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

* * * * *

(v) The Montreal Protocol control period(s) (either July 2, 1990 through June 30, 1991, or July 1, 1991, through December 31, 1992, or both) to which the transfer applies.

(c) * * *

(1) * * * The person must obtain from the principle diplomatic representative in that nation's embassy in the United States a document clearly stating that the nation agrees to reduce or increase, as applicable, its allowable calculated level of production by the amount being transferred for the Montreal Protocol control period(s) to which the transfer applies (either July 1, 1990, through June 30, 1991, or July 1, 1991, through December 31, 1992 or both) and that after the transfer the nation's total allowable production will not exceed 25 kilotonnes.

(2) * * *

(v) The Montreal Protocol control period(s) (either July 1, 1990, through June 30, 1991, or July 1, 1991, through December 31, 1991, or both) to which the transfer applies.

(d) * * * A request for production allowances will be considered a request for consumption allowances under § 82.10.

* * * * *

(3) If the Administrator's designated representative determines that the request for production allowances does not satisfactorily meet the requirements stated in paragraph (d) of the this section. * * *

(e) Any person that:

(1) In a baseline year produced a controlled substance that was either entirely transformed except for trace quantities by one or more other persons into other chemicals or exported; and

(2) Reported this production to EPA as required by the final rule published on November 26, 1990, at 55 FR 49116, may petition the Administrator's designated representative for production and consumption allowances to produce that controlled substance. The petition shall include a copy of a legally binding contract for the sale of the controlled substance to be produced by the petitioning person to another person who agrees to use the controlled substance that is the subject of the contract only and entirely for the purpose of manufacturing one or more other chemicals. The contract must include adequate guarantees that the controlled substance produced and sold under the contract is in fact entirely transformed (except for trace quantities) in the manufacture of one or more other chemicals. If the Administrator's designated representative concludes that the control is binding and includes adequate guarantees of use in the manufacture of other chemicals, that representative will issue the petitioning person the production and consumption allowances requested. The grant of allowances will be effective on the date that the notice is issued.

11. Section 82.10 is amended by removing paragraph (b); redesignating the introductory text of paragraph (a) as the introductory text of the section; redesignating paragraphs (a) (1) and (2) as paragraphs (a) and (b); redesignating paragraphs (a)(1) (i) through (ix) as paragraphs (a) (1) through (9); and revising the newly designated introductory text to the section to read as follows:

§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.

Any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the calculated level of controlled substances (other than recycled or used controlled substances) that the person has exported from the United States or its territories to any nation listed in appendix B to this part (Parties to the Montreal Protocol). Consumption allowances will be granted only for exports that depart the United States during the control period, and the consumption allowances granted will be valid only during the control period.

* * * * *

12. Section 82.11 is amended by revising the introductory text to read as follows:

§ 82.11 Exports to parties.

In accordance with the provisions of this section, any person may obtain authorization to convert potential production allowance to production allowances by exporting controlled substances to nations listed in appendix E (Article 5 Parties) of this part. Authorizations to convert will be granted only for controlled substances that depart the United States or its territories during the control period, and the authorizations to convert granted will be valid only during the control period. A request for authorization under this section will be considered a request for consumption allowances under § 82.10 as well.

* * * * *

13. Section 82.12 is amended by removing paragraph (a)(6), redesignating paragraph (a)(7) as paragraph (a)(6) and revising paragraph (a)(5) to read as follows:

§ 82.12 Transfers of production and consumption allowances.

* * * * *

(a) * * *

(5) The amount of allowances or authorization being transferred; and

* * * * *

14. Section 82.13 is amended by revising paragraphs (a) introductory text, (f) introductory text, (f)(1) introductory text, (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), (g) introductory text, and (g)(2)(iii) to read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect beginning with the first day of the control period.

* * * * *

(f) Every person ("producer") who will produce controlled substance during the control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of March 6, 1991, every producer must provide a report to the Administrator describing the following, if he has not already done so.

* * * * *

(2) * * *

(iii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances.

(iv) Dated records of the quantity of raw materials and feed stock chemicals used at each plant for the production of controlled substances.

* * * * *

(3) * * *

(ii) The calculated levels of production (expended allowances) for controlled substances for each plant and totaled for the control period to date.

* * * * *

(g) Importers of controlled substances must comply with the following

recordkeeping and reporting requirements.

* * * * *

(2) * * *

(iii) The calculated levels of import (expended allowances) of controlled substances for that quarter and totalled for the control period to date; and

* * * * *

[FR Doc. 91-5152 Filed 3-5-91; 8:45 am]
BILLING CODE 6560-50-M

federal register

Wednesday
March 6, 1991

Part VIII

Environmental Protection Agency

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41034; FRL 3845-3]

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twenty-seventh Report to the Administrator of EPA on November 19, 1990. As noted in this Report, which is included with this notice, the Committee revised the Priority List by adding one chemical and four chemical groups. The Committee is designating six chemicals from the IRIS group, as well as 4-vinylcyclohexene and sodium cyanide, that were previously recommended with intent-to-designate. The aldehydes chemical group is recommended with intent-to-designate. *N*-phenyl-1-naphthylamine, two chemicals from the IRIS group, the sulfone group, and a group of substantially produced chemicals in need of subchronic tests are recommended.

The ITC has not removed any chemicals from the Priority List as a result of EPA actions.

EPA invites interested persons to submit written comments on the Report. EPA is not holding a Focus Meeting for these chemicals and will proceed immediately to rulemaking. EPA is taking this action because (1) The designated chemicals have a statutory deadline and require a response by EPA within 1 year; and (2) the intent-to-designate group is unlikely to yield consensus in a timely manner because of the inability to identify interested parties on a chemical specific basis.

DATES: Written comments should be submitted by April 5, 1991.

ADDRESSES: Send written submissions bearing the document control number (OPTS-41034; FRL 3845-3) to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE G-004, 401 M St., SW., Washington, DC 20460.

The public record supporting this action, including comments, is available for public inspection in Rm. NE G-004 at the address noted above from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B,401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA has received the TSCA Interagency Testing Committee's Twenty-seventh Report to the Administrator.

I. Background

TSCA (Pub. L 94-469, 90 Stat. 2003 *et seq*; 15 U.S.C. 2601 *et seq.*) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemicals and groups in order to develop data relevant to determining the risks that such chemicals and groups may present to health or the environment. Section 4(e) of TSCA established the Interagency Testing Committee to recommend chemicals and groups to the Administrator of EPA for priority testing consideration. Section 4(e) directs the ITC to revise the TSCA section 4(e) Priority List at least every 6 months. The ITC's most recent revisions to this List are included in the Committee's Twenty-seventh Report. The Report was received by the Administrator on November 19, 1990, and is included in this Notice. The Report adds one chemical and four groups of chemicals to the TSCA section 4(e) Priority List.

II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals.

A notice will be published at a later date in the **Federal Register** adding most of the substances recommended in the ITC's Twenty-seventh Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716), which requires the reporting of unpublished health and safety studies on the listed chemicals. The delay in publishing that notice is necessary because of the requirement to complete the economic analysis on four chemical groups. That notice will also add most of the chemicals to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

III. Status of List

The ITC's Twenty-seventh Report notes the addition of chemicals and chemical groups to the Priority List. The current List contains two designated chemicals, two designated chemical groups, three recommended with intent-to-designate chemical groups, four recommended chemicals, and five recommended chemical groups.

Authority: 15 U.S.C. 2603.

Dated: February 26, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

Twenty-Seventh Report of the Interagency Testing Committee to the Administrator, Environmental Protection Agency

Summary

The U.S. Congress created the Interagency Testing Committee in 1976 to screen, select and recommend chemical substances and mixtures for priority health effects, chemical fate, or ecological effects testing consideration. The Committee (which consists of Members from 18 U.S. Government organizations) selects and recommends chemicals or chemical groups with testing information deficiencies because they may present an unreasonable risk of injury to health or the environment, may reasonably be anticipated to enter the environment in substantial quantities or may involve significant or substantial human exposure.

The Committee also facilitates coordination of chemical testing sponsored or required by U.S. Government organizations and enhances information exchange to promote cost-effective use of U.S. Government chemical testing resources. The Committee's statutory responsibilities are defined in section 4(e) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*).

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA), chemicals or chemical groups to which the Administrator should give priority testing consideration. Under the authority of TSCA section 4(e)(1)(B) the EPA Administrator shall publish in the **Federal Register** the Committee's Priority List of chemicals or chemical groups and their associated testing recommendations. The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond

within 12 months by either initiating rulemaking under TSCA section 4(a) or publishing the reason for not initiating rulemaking. The Congress directed the Committee to revise the TSCA section 4(e) Priority List at least every 6 months, and to transmit those revisions to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by designating two chemicals that were previously recommended with intent-to-designate and by adding one chemical and four chemical groups. The added chemical was nominated by the Occupational Safety and Health Administration. Two chemical groups were nominated by the EPA. The Committee's computerized, substructure-based chemical selection processes were used to identify the chemicals in the aldehyde group nominated by EPA as well as the chemicals in two chemical groups that either shared a common substructure or a common testing information deficiency. During this reporting period, the Committee considered available information on three chemicals and over thirty chemical groups. The Committee also deferred about 700 hundred chemicals from testing consideration at this time.

Chemicals or chemical groups (entries) on the Priority List are designated, recommended with intent-to-designate or recommended by the Committee. Designations were created by the U.S. Congress when they drafted TSCA. Recommendations with intent-to-designate were established by the Committee in their 17th Report (50 FR 47603; November 19, 1985). Recommendations were established by the Committee in their 11th Report (47 FR 54626; December 3, 1982). Revisions to the Priority List are presented, together with the types of testing recommended, in Table 1. The footnote letters following Table 1 acknowledge the Committee's efforts to coordinate chemical testing and to comprehensively examine ongoing testing-related activities and available information previously submitted under TSCA.

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY LIST

Group	CAS No.	Chemical	Action	Date	Recommended tests
.....	100-40-3	4-vinylcyclohexene[3,4]	Designated	11/90	Chemical fate: Aqueous volatilization rate. Health effects: Pharmacokinetics and oncogenicity by inhalation route of administration. Ecological effects: None.
.....	143-33-9	sodium cyanide[3,4,5]	Designated	11/90	Chemical fate: Soil sorption. Health effects: Under review, as cyanides. Ecological effects: Toxicity to migratory birds, plant uptake and translocation.
IRIS	79-10-7	acrylic acid[2,3]	Designated	11/90	Chemical fate: River die-away biodegradation. Health effects: Reproductive effects, developmental toxicity, mutagenicity, neurotoxicity and inhalation oncogenicity. Ecological effects: None.
IRIS	98-86-2	acetophenone[3]	Designated	11/90	Chemical fate: None Health effects: Oral and inhalation pharmacokinetics, inhalation subchronic, reproductive effects, developmental toxicity, mutagenicity, and neurotoxicity. Ecological effects: None.
IRIS	108-95-2	phenol[1,2,3,5]	Designated	11/90	Chemical fate: None. Health Effects: Oral and inhalation pharmacokinetics, inhalation subchronic, reproductive effects, and neurotoxicity. Ecological effects: None.
IRIS	121-69-7	*N,N*-dimethylaniline[2,3]	Designated	11/90	Chemical fate: Activated sludge biodegradation. Health effects: Oral and inhalation pharmacokinetics, inhalation subchronic, mutagenicity, reproductive effects, developmental toxicity, and neurotoxicity. Ecological effects. Algal toxicity, aquatic invertebrates acute and chronic toxicity, and fish chronic toxicity.
IRIS	141-78-6	ethyl acetate	Designated	11/90	Chemical fate: None. Health effects: Screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Triggering oncogenicity. Ecological effects: None.
IRIS	576-26-1	2,6-dimethylphenol	Designated	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Ecological effects: Algal toxicity, aquatic invertebrate and fish chronic toxicity.
Aldehydes		.....	Recommended with-intent-to-designate.	11/90	Chemical fate: None. Health effects: None. Ecological effects: Algal toxicity, aquatic invertebrates acute and chronic toxicity and fish chronic toxicity.

TABLE 1.—REVISIONS TO THE SECTION 4(E) PRIORITY LIST—Continued

Group	CAS No.	Chemical	Action	Date	Recommended tests
IRIS	51-28-5	2,4-dinitrophenol[1,2,3]	Recommended	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Oral and inhalation pharmacokinetics, dermal absorption, inhalation subchronic, reproductive effects, developmental toxicity, mutagenicity, and neurotoxicity. Ecological effects: Aquatic invertebrates and fish chronic toxicity.
IRIS	95-65-8	3,4-dimethylphenol	Recommended	11/90	Chemical fate: Aqueous photolysis screening and river die-away biodegradation. Health effects: Subchronic, screening for reproductive effects, developmental toxicity, mutagenicity and neurotoxicity. Ecological effects: Algal toxicity, aquatic invertebrates and fish chronic toxicity.
.....	90-30-2	*N*-phenyl-1-naphthylamine	Recommended	11/90	Chemical fate: Water solubility, octanol-water partition coefficient, vapor pressure and biodegradation. Health effects: Oncogenicity. Ecological effects: Algal toxicity, aquatic invertebrates and fish chronic toxicity.
Sulfones			Recommended	11/90	Chemical fate: Physical and chemical properties. Health effects: None. Ecological effects. None.
Substantially produced chemicals in need of subchronic tests.			Recommended	11/90	Chemical fate: None. Health effects: Subchronic toxicity. Ecological effects. None.

[1] Superfund Amendments and Reauthorization Act (SARA) section 110.
[2] Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.
[3] Clean Air Act Amendments, section 301.
[4] Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).
[5] TSCA section 8(d) Health and Safety Data Reporting Rule.

Listed below are the individual chemicals for the chemical groups in Table 1. Chemicals nos. 1 through 89 are aldehydes, chemical nos. 90 through 115 are sulfones, and chemicals nos. 116 through 150 are substantially produced chemicals in need of subchronic tests.

Chemical Name	CAS No.	Notes
1. 1-naphthalenecarboxaldehyde	66-77-3	
2. acetaldehyde	75-07-0	b
3. acetaldehyde, trichloro-	75-87-6	
4. propanal, 2-methyl-	78-84-2	b
5. 2-propenal, 2-methyl-	78-85-3	
6. benzenepropanal, 4-(1,1-dimethylethyl)-.α.-methyl-..	80-54-6	
7. acetaldehyde, (1,3-dihydro-1,3,3-trimethyl-2H-indol-2-ylidene)	84-83-3	
8. benzaldehyde, 2-chloro-	89-98-5	
9. benzaldehyde, 2-hydroxy-	90-02-8	
10. benzaldehyde, 2,5-dimethoxy-	93-02-7	
11. benzeneacetaldehyde, .α.-methyl-	93-53-8	
12. benzaldehyde, 2,4-dihydroxy-	95-01-2	
13. benzaldehyde, 2-hydroxy-5-nitro-	97-51-8	
14. 2-furancarboxaldehyde	98-01-1	d
15. 2-thiophenecarboxaldehyde	98-03-3	
16. benzaldehyde, 4-(dimethylamino)-	100-10-7	
17. 3-cyclohexene-1-carboxaldehyde	100-50-5	
18. benzaldehyde	100-52-7	
19. 2-propenal, 2-methyl-3-phenyl-	101-39-3	
20. octanal, 2-(phenylmethylene)-	101-86-0	
21. benzenepropanal, .α.-methyl-4-(1-methylethyl)-	103-95-7	
22. benzeneacetaldehyde, 4-methyl-	104-09-6	
23. 2-propenal, 3-phenyl-	104-55-2	
24. benzaldehyde, 4-methyl-	104-87-0	

Chemical Name	CAS No.	Notes
25 benzaldehyde, 4-chloro-	104-88-1	
26. 6-octenal, 3,7-dimethyl-	106-23-0	
27. 2,6-octadienal, 3,7-dimethyl-, (*Z*)-	106-26-3	
28. 5-heptenal, 2,6-dimethyl-	106-72-9	
29. 2-propenal	107-02-8	a,b
30. acetaldehyde, chloro-	107-20-0	
31. ethanedial	107-22-2	
32. octanal, 7-hydroxy-3,7-dimethyl-	107-75-5	
33 undecanal, 2-methyl-	110-41-8	
34 pentanal	110-62-3	
35. pentanedial	111-30-8	
36. heptanal	111-71-7	
37. decanal	112-31-2	
38. undecanal	112-44-7	
39. 10-undecenal	112-45-8	
40 dodecanal	112-54-9	
41. benzaldehyde, 3,4-dimethoxy-	120-14-9	
42. benzaldehyde, 4-(diethylamino)-	120-21-8	
43. 1,3-benzodioxole-5-carboxaldehyde	120-57-0	
44. benzaldehyde, 3-ethoxy-4-hydroxy-	121-32-4	
45. benzaldehyde, 4-hydroxy-3-methoxy-	121-33-5	
46. heptanal, 2-(phenylmethylene)-	122-40-7	
47. benzeneacetaldehyde	122-78-1	
48. hexanal, 2-ethyl-	123-05-7	
49. benzaldehyde, 4-hydroxy-	123-08-0	
50. benzaldehyde, 4-methoxy-	123-11-5	
51. propanal	123-38-6	b
52. octanal	124-13-0	
53. nonanal	124-19-6	
54. 4a(4*H*)-dibenzofurancarboxaldehyde, 1,5a,6,9,9a,9b-hexahydro-	126-15-8	
55. benzaldehyde, 2-methoxy-	135-02-4	
56. 2,6-octadienal, 3,7-dimethyl-, (*E*)-	141-27-5	
57. 9-undecenal	143-14-6	
58. benzaldehyde, 4-(trifluoromethyl)-	455-19-6	
59. 2-hexenal	505-57-7	
60. benzaldehyde, 2-nitro-	552-89-6	
61. butanal, 3-methyl-	590-86-3	
62. propanal, 3-hydroxy-2,2-dimethyl-	597-31-9	
63. benzaldehyde, 4-(1,1-dimethylethyl)-	939-97-9	d,e
64. 2-pyridinecarboxaldehyde	1121-60-4	
65. benzaldehyde, 4-butyl-	1200-14-2	
66. 2-propenal, 3-phenyl-, monopentyl deriv.	1331-92-6	
67. benzaldehyde, methyl-	1334-78-7	
68. 3-cyclohexene-1-carboxaldehyde, 2,4,6-trimethyl-	1423-46-7	
69. 2-propenal, 3-(2-methoxyphenyl)-	1504-74-1	
70. 1-piperidinecarboxaldehyde	2591-86-8	
71. benzaldehyde, 3-bromo-	3132-99-8	
72. propanal, 3-(methylthio)-	3268-49-3	
73. octanal, 7-methoxy-3,7-dimethyl-	3613-30-7	
74. 3-cyclopentene-1-acetaldehyde, 2,2,3-trimethyl-	4501-58-0	
75. hexanal, 3,5,5—trimethyl-	5435-64-3	
76. 1,3-benzodioxole-5-carboxaldehyde, 7-methoxy-	5780-07-4	
77. 6-octenal, 3,7-dimethyl-, (*S*)-	5949-05-3	
78. octanal, 3,7-dimethyl-	5988-91-0	
79. benzaldehyde 4-ethoxy-	10031-82-0	

Chemical Name	CAS No.	Notes
80. 2-propenal, 3- 4-(1,1-dimethylethyl)phenyl -2-methyl-	13586-68-0	
81. benzaldehyde, 4-(diethylamino)-2-hydroxy-	17754-90-4	
82. hexenal, 2-ethyl-	26266-68-2	
83. 3-cyclohexene-1-carboxaldehyde, dimethyl-	27939-60-2	
84. benzaldehyde, (dimethylamino)-	28602-27-9	
85. 3-cyclohexene-1-carboxaldehyde, 4-(4-hydroxy-4-methylpentyl)-	31906-04-4	
86. 3-cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-	37677-14-8	
87. benzaldehyde, 3-phenoxy-	39515-51-0	
88. 3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methyl-3-pentenyl)-	52475-86-2	
89. 3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methylpentyl)-	66327-54-6	
90. dimethylsulfone	67-71-0	
91. sulfolene	77-79-2	
92. sulfonyl bis-(4-chlorobenzene)	80-07-9	
93. 4,4'-diaminodiphenyl sulfone	80-08-0	
94. bisphenol *S*	80-09-1	
95. 2-amino-4-(methylsulfonyl)phenol	98-30-6	
96. sulfolane	126-33-0	
97. diphenylsulfone	127-63-9	
98. 2,2'-sulfonyl bis-ethanol	2580-77-0	
99. 1,1'-[Methylene bis(sulfonyl)]bisethene	3278-22-6	
100. 2-[(3-aminophenyl)sulfonyl]ethanol	5246-57-1	
101. 3-[*N*-ethyl-4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]-*m*-toluidino]-propionitrile	16588-67-3	
102. 6-(methylsulfonyl)-2-benzothiazolamine	17557-67-4	
103. 2-amino-4-[(2-hydroxyethyl)sulfonyl]phenol	17601-96-6	
104. 4-phenylthiomorpholine, 1,1-dioxide	17688-68-5	
105. 4-[4-[(2,6-dichloro-4-nitrophenyl)azo]phenyl]thiomorpholine, 1,1-dioxide-	17741-62-7	
106. 3-(decyloxy)tetrahydrothiophene 1,1-dioxide	18760-44-6	
107. 1-(diiodomethyl)sulfonyl-4-methyl benzene	20018-09-1	
108. 1,1'-[oxybis(methylenesulfonyl)] bisethene	26750-50-5	
109. 2,2'-[oxybis(methylenesulfonyl)] bisethanol	36724-43-3	
110. 1,1'-[methylenebis(sulfonyl)] bis-2-chloroethane	41123-59-5	
111. 2,2'-[methylenebis(sulfonyl)] bisethanol	41123-69-7	
112. 2-[(3-nitrophenyl)sulfonyl] ethanol	41687-30-3	
113. 2-[(6-amino-2-naphthalenyl)sulfonyl] ethanol	52218-35-6	
114. 1,1'-[oxybis(methylenesulfonyl)] bis-2-chloroethane	53061-10-2	
115. 4-[[4-(phenylmethoxy)phenyl]sulfonyl] phenol	63134-33-8	
116. *p,p'*-oxybis(benzenesulfonylhydrazide)	80-51-3	
117. naphthalenedicarboxylic anhydride	81-84-5	
118. 2-ethylanthraquinone	84-51-5	
119. 7-amino-4-hydroxy-2-naphthalenesulfonic acid	87-02-5	
120. 1-naphthol	90-15-3	
121. 3-hydroxy-2-naphthoic acid	92-70-6	
122. triethylene glycol bis(2-ethylhexanoate)	94-28-0	
123. 2-(4-morpholinyldithio)-benzothiazole	95-32-9	
124. *n*-butyl methacrylate	97-88-1	c,d
125. 1,3-benzenedisulfonic acid	98-48-6	
126. 3,4-dichloronitrobenzene	99-54-7	
127. isophthaloyl chloride	99-63-8	
128. terephthaloyl chloride	100-20-9	
129. 4-ethoxynitrobenzene	100-29-8	
130. acetoacetanilide	102-01-2	
131. butyric anhydride	106-31-0	
132. isobutyl acrylate	106-63-8	c
133. diethylene glycol dimethyl ether	111-96-6	
134. carbinol acetate	112-15-2	

Chemical Name	CAS No.	Notes
135. bromamine acid	116-81-4	
136. 4-methyl-2-nitro-phenol	119-33-5	
137. 4-(acetylamino) benzenesulfonyl chloride	121-60-8	
138. 2,4-pentanedione	123-54-6	
139. propanoic anhydride	123-62-6	
140. bis(2-ethylhexyl)-2-butenedioate	142-16-5	
141. perfluorotributylamine	311-89-7	
142. perfluoro-*N*-hexane	355-42-0	
143. trichloromethanesulfenyl chloride	594-42-3	
144. 1,2-dichlorobutane	616-21-7	
145. 1,3-dicyanobenzene	626-17-5	
146. 3,4-dichlorobutene	760-23-6	
147. 2-(2-aminoethoxy)-ethanol	929-06-6	
148. quinacridone	1047-16-1	
149. ammonium carbamate	1111-78-0	
150. hexa(methoxymethyl) melamine	3089-11-0	

Notes:

a. Superfund Amendments and Reauthorization Act (SARA) section 110.
b. Emergency Planning and Community Right-to-Know Act (EPCRA) section 313.
c. Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR).
d. TSCA section 8(d) Health and Safety Data Reporting Rule.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives:

Council on Environmental Quality
Under consideration
Department of Commerce
Raimundo Prat
Environmental Protection Agency
Letitia Tahan, Member
Vincent Nabholz, Alternate
National Cancer Institute
Susan Sieber, Member (See Note 1)
Thomas P. Cameron, Alternate
National Institute of Environmental Health Sciences
James K. Selkirk, Chairperson
National Institute for Occupational Safety and Health
Robert W. Mason, Member
Rodger L. Tatken, Alternate
National Science Foundation
William L. Pengelly, Member (See Note 2)
Jarvis L. Moyers, Alternate
Occupational Safety and Health Administration
Loretta Schuman, Vice-Chairperson
Stephen Mallinger, Alternate
Liaison Agencies and Their Representatives
Agency for Toxic Substances and Disease Registry
Deborah Barsotti
Consumer Product Safety Commission
Lakshmi C. Mishra
Department of Agriculture
Richard M. Parry, Jr.
Elise A. B. Brown
Department of Defense
Harry Salem
Melvin E. Anderson
Department of the Interior
Clifford P. Rice
Barnett A. Rattner
Department of Transportation
James O'Steen
George Cushmac (See Note 3)
Food and Drug Administration
Charles J. Kokoski
Raju Kammula
National Library of Medicine
Vera Hudson
National Toxicology Program
Miriam Davis (See Note 4)
Victor A. Fung (See Note 5)
U.S. International Trade Commission
Edward Matusik
James Raftery
Committee Staff
John D. Walker, Ph.D., Executive Director
Norma S. L. Williams, Executive Assistant
Support Staff
Alan Carpien -- Office of the General Counsel, EPA

Notes:
(1) Appointed on July 25, 1990.
(2) Appointed on August 29, 1990.
(3) Appointed on May 24, 1990.
(4) Appointed on September 18, 1990.
(5) Appointed on September 18, 1990.

The Committee acknowledges and is grateful for the assistance and support Given by the staff of Syracuse Research Corp. (technical support contractor) and personnel of the EPA Office of Toxic Substances.

Chapter 1--Introduction

1.1 *Background.* Congress created the Interagency Testing Committee under the Toxic Substances Control Act (TSCA) to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority testing consideration. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List published in the **Federal Register.**

At least every 6 months, the Committee revises the Priority List and transmits these revisions to the EPA Administrator. The Committee's testing recommendations are described in previous reports (Refs. 1 through 11).

1.2 *Committee's previous reports.* Twenty-six previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register.** In these 26 reports, the Committee has recommended testing for 91 chemicals and 28 chemical groups.

1.3 *Committee's activities during this reporting period.* Between April 26, 1990 and September 27, 1990 the Committee processed chemicals that were nominated by Member Agencies, evaluated chemicals by using the Committee's computerized, substructure-based, chemical selection processes and examined lists of ongoing activities related to reducing testing information deficiencies for commercial chemicals.

1.3.a *Nominations and selections.* Member-Agency nominations for this Report include *N*-phenyl-1-naphthylamine (Occupational Safety and Health Administration), Integrated Risk Information System (IRIS)

chemicals and aldehydes (the U.S. Environmental Protection Agency).

Nominating chemicals to the Committee offers several advantages that appear to satisfy the intentions of Congress when they created the ITC. The nominator is provided with the unique opportunity to utilize the Committee-activated networking and information exchange processes that allows the nominator to access otherwise unavailable information from Member Agencies. Committee networking is important because it allows the nominator to determine if there are unpublished studies that could satisfy the nominator's testing information deficiencies or that could provide the nominator with additional testing concerns. Information exchange is important at the Committee level because it is not limited to a single type of testing, but includes comprehensive discussions of health effects, chemical fate and ecological effects testing. It allows the nominator to save resources by analyzing only essential testing information deficiencies, while the Committee comprehensively addresses other testing information deficiencies without substantive delays in processing nominations.

Nominating chemicals to the Committee also allows the nominator to take advantage of an unusual information-collecting opportunity that only exists for Committee recommendations. For any chemical or chemical group recommended by the ITC, the EPA automatically promulgates TSCA 8(a) and 8(d) final rules. TSCA 8(a) requires that industry submit manufacturing, importation and exposure data for any chemical listed in a final section 8(a) rule. TSCA 8(d) requires that industry submit all health effects, epidemiology, medical case studies, monitoring, chemical fate and ecological effects studies for any chemical listed in a final section 8(d) rule. TSCA section 8(a) and 8(d) data are generated in 3 months through an ITC recommendation in contrast to 18 to 24 months through conventional notice and comment rulemaking. The resulting TSCA section 8 data are analyzed and a report is generated for the nominator that indicates whether any of the data submissions are likely to satisfy the nominator's testing information deficiencies.

Chemical group selections for this Report include sulfones and substantially produced chemicals in need of subchronic tests. Sulfones and substantially produced chemicals in need of subchronic tests were identified by using the Committee's computerized, substructure-based, chemical selection processes. The substantially produced chemicals in need of subchronic tests selection exemplifies a feature of these processes that is being utilized for the first time, i.e., the ability of the processes to identify a group of chemicals that have a common testing information deficiency. This cost-effective feature should allow EPA to add those identified chemicals that satisfy the TSCA section 4 statutory requirements [and for which TSCA section 8 information does not reduce the need to consider subchronic toxicity testing] to a subchronic toxicity listing rule and should provide others (e.g., NTP, OECD, etc.) with the option of selecting any of the remaining chemicals for testing.

The Committee uses their computerized processes to enhance their ability to cost-effectively screen chemicals for exposure potential or potential to persist and cause adverse health or ecological effects by: (1) Identifying chemical groups with identical substructures and similar adverse effects potentials or chemical fate characteristics, (2) identifying chemical groups with similar uses or common testing information deficiencies and (3) recommending chemical groups, with insufficient test data, for health effects, chemical fate, or ecological effects testing. The Committee continues to recommend groups of structurally- or use-related chemicals or groups with common testing information deficiencies for screening tests and to review the TSCA section 8(a) and 8(d) information that is submitted in response to recommendations. The Committee believes recommending groups of structurally- or use-related chemicals or groups of chemicals with common testing information deficiencies for screening tests and reviewing TSCA section 8(a) and 8(d) information before making subsequent testing recommendations is a cost-effective approach to satisfying chemical testing information deficiencies because it promotes a comprehensive analysis of chemicals that may produce similar effects or that may involve similar exposures. The Committee processes external nominations of structurally- or use-related chemical groups or groups with common testing information deficiencies and encourages external nominators to take advantage of the Committee's unique networking and information exchange processes and accelerated TSCA 8(a) and 8(d) information-collecting authority.

Processing and recommending Member-Agency and other nominations and computer-facilitated chemical group selections enhances information exchange that promotes cost-effective use of U.S. Government chemical testing resources, encourages harmonization of methods for chemical testing, and facilitates coordination of testing being sponsored or required by U.S. Government organizations.

1.3.b *Comprehensive information processing.* During this reporting period, several For Your Information (FYI), TSCA section 8(d) and 8(e) documents were reviewed. These documents are stored on microfiche in the TSCA Public Docket Office, Office of Toxic Substances, Environmental Protection Agency, Room G-004 NE Mall, 401 M St., SW., Washington, DC 20460. These microfiched documents are also available from the National Technical information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (1-800-336-4700), and from Chemical Information Systems, Inc., 7215 York Road, Baltimore, Maryland 21212 (1-800-CIS-USER). The Committee referenced several of these documents in Chapter 2 of this report and readers are referred to the above addresses to obtain further information. Interested parties can also obtain, from the EPA address, copies of publicly-available reports, letters and published references supporting recommendations of chemicals in this report.

The Committee continues to comprehensively search available domestic and international lists of ongoing activities related to reducing testing information deficiencies on chemicals under review. Efforts to conduct these searches identified chemicals listed in other statutes, e.g., chemicals listed in Title III of the 1990 amendments of the Clean Air Act. The Committee has recommended over 50 chemicals listed in this statute, including 5 Iris chemicals for inhalation testing (acrylic acid, acetophenone, phenol, 2,4-dinitrophenol and *N,N*-dimethylaniline). The Committee continues to review information on chemicals listed in this and other relevant statutes. Efforts to conduct searches also identified chemicals for which TSCA information-gathering activities are ongoing (see Table 1 footnotes). The Committee makes the results of these searches publicly available by referencing TSCA submissions in Reports to the EPA Administrator or making tables and references of these submissions available in the public dockets supporting a Report to the EPA Administrator.

During this reporting period, the Committee considered available

information on 3 chemicals and over 30 chemical groups. Chemical groups currently under consideration include alkenes, alkylamines, alkylnitros, alkylsulfonates, alkynes, anhydrides, aromatic dianhydrides, aromatic sulfhydryls, aromatic sulfonates, aryl ethers, benzothiazoles, carbamates, dialkylamines, ethanolamines, epoxides, ethylhexyl derivatives, glycol ethers, haloalkyl ethers, heterocyclics, hinderd phenols, hydrazines, inorganics, isophthalic acids, isothiocyanates, nitriles, phenylenediamines, phosphates, phosphoniums, pyrrolidinones, siloxanes, sulfenamides, thiocarbamates, thiol esters, thios, triazines, etc. The Committee designated two chemicals that were recommended with intent-to-designate in the 25th and 26th, Reports. One chemical and four chemical groups were selected for addition to the section 4(e) Priority List. Review of the remaining chemicals and chemical groups is ongoing.

1.3.c *Information dissemination.* To emphasize the Committee's efforts to promote public understanding of the ITC's functions and purposes, the Committee is listing for the first time some of the Committee-related activities that occurred during this reporting period. On June 20, 1990 the Committee's Executive Director testified before the House Subcommittee on Environment, Energy and Natural Resources. On June 29, 1990, during an information exchange symposium, the Committee's Chairperson and Executive Director presented chemical selection procedures used by the National Toxicology Program (NTP) and the ITC. On July 2 and September 7, 1990, the Executive Director briefed the Synthetic Organic Chemical Manufactures Association and the Chemical Manufactures Association, respectively, on ITC activities. On September 20, 1990, the Executive Director described the ongoing efforts to evaluate the ITC's substructure-based computerized chemical selection processes at an international workshop convened in the Netherlands.

1.3.d *Deferrals.* To promote public understanding of the total number of chemicals that the Committee processes, the Committee is listing for the first time about 700 chemicals in 4 chemical groups that are being deferred from further consideration at this time because the chemicals were not reported to the EPA or the U.S. International Trade Commission as being recently produced. Four IRIS chemicals (ammonium sulfamate, CFC-113, HMX and hydrogen sulfide) are also being deferred; the rationales for which for which are described in section 2.2.c. of this Report. Deferred and other chemicals are recycled through the Committee's computerized processes to identify chemicals whose production volumes have substantially changed. On the following list of deferrals, chemicals no 1 through 429 are aldehydes, chemicals no 430 through 525 are brominated flame retardants, chemicals no 526 through 605 are isocyanates and chemicals 606 through 686 are sulfones.

	Chemical Name	CAS No.
1.	4-pyridinecarboxaldehyde, 3-hydroxy-2-methyl-5-[(phosphonooxy)methyl]-	54-47-7
2.	propanal, 2,3-dihydroxy-, (±)-	56-82-6
3.	4-pyridinecarboxaldehyde, 3-hydroxy-5-(hydroxymethyl)-2-methyl-, hydrochloride	65-22-5
4.	hexanal	66-25-1
5.	2-furancarboxaldehyde, 5-(hydroxymethyl)-	67-47-0
6.	acetaldehyde, trifluoro-	75-90-1
7.	propanal, 2-oxo-	78-98-8
8.	acetaldehyde, dichloro-	79-02-7
9.	1*H*-pyrrole-3-carboxaldehyde, 2,5-dimethyl-1-phenyl-	83-18-1
10.	benzaldehyde, 2,6-dichloro-	83-38-5
11.	benzaldehyde, 3,4,5-trimethoxy-	86-81-7
12.	2-butenoic acid, 2,3-dichloro-4-oxo-, (*Z*)-	87-56-9
13.	3-cyclohexene-1-carboxaldehyde, 6-methyl-	89-04-1
14.	benzaldehyde, 3,5-dichloro-2-hydroxy-	90-60-8
15.	benzaldehyde, 4-[(2-chloroethyl)ethylamino]-2-methyl-	92-10-4
16.	benzaldehyde, 4-(diethylamino)-2-methyl-	92-14-8
17.	benzaldehyde, 4-[(2-chloroethyl)methylamino]-	94-31-5
18.	butanal, 2-methyl-	96-17-3
19.	butanal, 2-ethyl-	97-96-1
20.	benzaldehyde, 3-nitro-	99-61-6
21.	benzeneacetaldehyde, α, 4-dimethyl-	99-72-9
22.	benzaldehyde, 3-hydroxy-	100-83-4
23.	benzenepropanal	104-53-0
24.	undecanal, 2,6,10-trimethyl-	105-88-4
25.	butanal, 3-hydroxy-	107-89-1
26.	acetaldehyde, tribromo-	115-17-3
27.	1, 3-cyclohexadiene-1-carboxaldehyde, 2,6,6-trimethyl-	116-26-7
28.	retinal	116-31-4
29.	benzaldehyde, 4-ethoxy-3-methoxy-	120-25-2
30.	benzaldehyde, 4-(1-methylethyl)-	122-03-2
31.	pentanal, 2-methyl-	123-15-9
32.	2-butenal, (*E*)-	123-73-9
33.	tetradecanal	124-25-4
34.	benzaldehyde, 4-hydroxy-3,5-dimethoxy-	134-96-3
35.	9-undecenal, 2,6,10-trimethyl-	141-13-9
36.	7-octenal, 3,7-dimethyl-	141-26-4
37.	2, 4-hexadienal, (*E, E*)-	142-83-6
38.	benzaldehyde, 2-hydroxy-3-methoxy-	148-53-8
39.	benzaldehyde, 2-chloro-6-fluoro-	387-45-1
40.	2-cyclohexene-1-carboxaldehyde, 2,6,6-trimethyl-	432-24-6
41.	1-cyclohexene-1-carboxaldehyde, 2,6,6-trimethyl-	432-25-7
42.	benzaldehyde, 3-(trifluoromethyl)-	454-89-7
43.	benzaldehyde, 3-fluoro-	456-48-4
44.	benzaldehyde, 4-fluoro-	459-57-4
45.	2-cyclohexene-1-acetaldehyde, 2,6,6-trimethyl-	472-64-0
46.	1-cyclohexene-1-acetaldehyde, 2,6,6-trimethyl-	472-66-2
47.	retinal, 13-cis-	472-86-6

	Chemical Name	CAS No.
48.	benzaldehyde, 2,4,6-trimethyl-	487-68-3
49.	1*H*-indole-3-carboxaldehyde	487-89-8
50.	benzaldehyde, 3-ethoxy-2-hydroxy-	492-86-6
51.	hexanal, 2-ethyl-3-hydroxy-	496-03-7
52.	2-butenal, 2-methyl-, (*E*)-	497-03-0
53.	3-thiophenecarboxaldehyde	498-62-4
54.	3-pyridinecarboxaldehyde	500-22-1
55.	2, 6,10-dodecatrienal, 3,7,11-trimethyl-, (*E,E*)-	502-67-0
56.	retinal, 9-cis-	514-85-2
57.	benzaldehyde, 2-amino-	529-23-7
58.	benzaldehyde, 4-nitro-	555-16-8
59.	benzaldehyde, 4-amino-	556-18-3
60.	2,6-nonadienal, (*E,Z*)-	557-48-2
61.	bicyclo[3.1.1]hept-2-ene-2-carboxaldehyde, 6,6-dimethyl-	564-94-3
62.	benzaldehyde, 3-methoxy-	591-31-1
63.	benzaldehyde, 2,4,6-trinitro-	606-34-8
64.	benzaldehyde, 4-(dipropylamino)-	613-28-5
65.	benzaldehyde, 2-ethoxy-	613-69-4
66.	benzaldehyde, 2-hydroxy-5-methyl-	613-84-3
67.	2-furancarboxaldehyde, 5-methyl-	620-02-0
68.	benzaldehyde, 3-methyl-	620-23-5
69.	benzaldehyde, 3-hydroxy-4-methoxy-	621-59-0
70.	1, 4-benzenedicarboxaldehyde	623-27-8
71.	2-propenal, 3-(2-furanyl)-	623-30-3
72.	2-pentenal, 2-methyl-	623-36-9
73.	2-propynal	624-67-9
74.	hexadecanal	629-80-1
75.	propanal, 2,2-dimethyl-	630-19-3
76.	benzaldehyde, 5-chloro-2-hydroxy-	635-93-8
77.	butanedial	638-37-9
78.	9-anthracenecarboxaldehyde	642-31-9
79.	1, 2-benzenedicarboxaldehyde	643-79-8
80.	2-hexenal, 2-ethyl-	645-62-5
81.	benzaldehyde, 2-hydroxy-4-methoxy-	673-22-3
82.	1-naphthalenecarboxaldehyde, 2-hydroxy-	708-06-5
83.	2-pentenal	764-39-6
84.	2, 4-pentadienal	764-40-9
85.	2-propenal, 2-methyl-3-[4-(1-methylethyl)phenyl]-	831-97-0
86.	4-pyridinecarboxaldehyde	872-85-5
87.	benzaldehyde, 2,4-dichloro-	874-42-0
88.	2-propenal, 3-(2-furanyl)-2-methyl-	874-66-8
89.	benzaldehyde, 4-(acetyloxy)-	878-00-2
90.	benzaldehyde, 4-(acetyloxy)-3-methoxy-	881-68-5
91.	propanal, 2-chloro-2-methyl-	917-93-1
92.	1*H*-pyrrole-2-carboxaldehyde	1003-29-8
93.	benzeneacetaldehyde, 4-methoxy-α-oxo-	1076-95-5
94.	8'-apo-*β*, psi-carotenal	1107-26-2
95.	pentanal, 4-methyl-	1119-16-0
96.	2-pyridinecarboxaldehyde, 6-methyl-	1122-72-1
97.	benzaldehyde, 4-bromo-	1122-91-4
98.	benzaldehyde, 2, 5-dihydroxy-	1194-98-5
99.	1, 3-benzodioxole-5-propanal, .α.-methyl-	1205-17-0
100.	propanal, phenyl-	1335-10-0
101.	hexenal	1335-39-3
102.	benzeneacetaldehyde, ar-(1-methylethyl)-	1335-44-0
103.	undecenal	1337-83-3
104.	benzaldehyde, 2-chloro-4-(dimethylamino)-	1424-66-4
105.	benzaldehyde, 3-amino-	1709-44-0
106.	2-propenal, 3-(4-nitrophenyl)-	1734-79-8
107.	1*H*-Indole-3-carboxaldehyde, 1-methyl-2-phenyl-	1757-72-8
108.	benzaldehyde, 5-bromo-2-hydroxy-	1761-61-1
109.	2-propenal, 3-(4-methoxyphenyl)-	1963-36-6
110.	benzaldehyde, 3,4-diethoxy-	2029-94-9
111.	4-pentenal	2100-17-6
112.	benzaldehyde, 2,3,4-trimethoxy-	2103-57-3
113.	1-cyclohexene-1-carboxaldehyde, 4-(1-methylethenyl)-	2111-75-3
114.	acetaldehyde, phenoxy-	2120-70-9
115.	propanal, 3-hydroxy-	2134-29-4
116.	benzaldehyde, 2,3,4-trihydroxy-	2144-08-3
117.	benzaldehyde, 4-hydroxy-3, 5-dimethyl-	2233-18-3
118.	6-nonenal, (*Z*)-	2277-19-2
119.	2, 4-decadienal	2363-88-4
120.	2-octenal	2363-89-5
121.	6-octenal, 3,7-dimethyl-, (*R*)-	2385-77-5
122.	benzaldehyde, 2-hydroxy-3,5-dinitro-	2460-59-5
123.	2-nonenal	2463-53-8
124.	2-heptenal	2463-63-0
125.	2-undecenal	2463-77-6
126.	benzaldehyde, 4-ethoxy-3-hydroxy-	2539-53-9
127.	2-octenal, (*E*)-	2548-87-0
128.	pentadecanal	2765-11-9
129.	benzaldehyde, 3-bromo-4-hydroxy-5-methoxy-	2973-76-4

	Chemical Name	CAS No.
130.	2-nonenal, 2-pentyl-	3021-89-4
131.	2-butenal, 2-methyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	3155-71-3
132.	benzaldehyde, 4-(methylthio)-	3446-89-7
133.	2-pentenal, 3-methyl-	3592-19-6
134.	propanal, 3-hydroxy-2,2-bis(hydroxymethyl)-	3618-32-4
135.	2-decenal	3913-71-1
136.	1,4-piperazinedicarboxaldehyde	4164-39-0
137.	benzaldehyde, 4-(diphenylamino)-	4181-05-9
138.	2-benzofurancarboxaldehyde	4265-16-1
139.	2,4-heptadienal, (*E,E*)-	4313-03-5
140.	benzeneacetaldehyde, 4-(1-methylethyl)-	4395-92-0
141.	benzaldehyde, 4-(phenylmethoxy)-	4397-53-9
142.	benzeneacetaldehyde, α-ethylidene-	4411-89-6
143.	3-hexenal	4440-65-7
144.	benzaldehyde, 2,4,5-trimethoxy-	4460-86-0
145.	4-hexenal, (*Z*)-	4634-89-3
146.	benzaldehyde, 4-ethyl-	4748-78-1
147.	2-dodecenal	4826-62-4
148.	2,6,9,11-dodecatetraenal, 2,6,10-trimethyl-	4955-32-2
149.	benzeneacetaldehyde, α-(2-phenylethylidene)-	5031-88-4
150.	benzaldehyde, 2-hydroxy-3-nitro-	5274-70-4
151.	2-pentenal, 4-methyl-	5362-56-1
152.	benzenepropanal, 4-methyl-	5406-12-2
153.	1*H*-indole-3-carboxaldehyde, 2-methyl-	5416-80-8
154.	benzaldehyde, 4-hydroxy-3-iodo-5-methoxy-	5438-36-8
155.	bicyclo[2.2.1]hept-5-ene-2-carboxaldehyde	5453-80-5
156.	benzaldehyde, 4-propoxy-	5736-85-6
157.	benzaldehyde, 4-butoxy-	5736-88-9
158.	benzaldehyde, 4-(pentyloxy)-	5736-91-4
159.	benzaldehyde, 4-(hexyloxy)-	5736-94-7
160.	2, 4-heptadienal	5910-85-0
161.	2, 4-nonadienal, (*E,E*)-	5910-87-2
162.	2-propenal, 3-[4-(dimethylamino)phenyl]-	6203-18-5
163.	benzaldehyde, 2,4-dihydroxy-3-methyl-	6248-20-0
164.	benzaldehyde, 3,4-dichloro-	6287-38-3
165.	benzaldehyde, 2,3-dichloro-	6334-18-5
166.	propanal, 3-(diethylamino)-2,2-dimethyl-	6343-47-1
167.	benzaldehyde, 2-chloro-5-nitro-	6961-21-3
168.	2-propenal, 2-methyl-3-[2-(1-methylethyl)phenyl]-	6502-23-4
169.	4-hexenal, 5-methyl-2-(1-methylethenyl)-, (*R*)-	6544-40-7
170.	benzaldehyde, 2-bromo	6630-33-7
171.	undecanal, 2-ethylidene-	6720-16-7
172.	2-hexenal, (*E*)-	6728-26-3
173.	4-heptenal, (*Z*)-	6728-31-0
174.	2, 4-nonadienal	6750-03-4
175.	3-hexenal, (*Z*)-	6789-80-6
176.	benzaldehyde, 4-pentyl-	6853-57-2
177.	2-propenal, 3-(1,3-benzodioxol-5-yl)-2-methyl-	6974-47-6
178.	9,10-anthracenedicarboxaldehyde	7044-91-9
179.	2-thiophenecarboxaldehyde, 5-chloro-	7283-96-7
180.	hexanal, 2-(phenylmethylene)-	7492-44-6
181.	acetaldehyde, [(3,7-dimethyl-6-octenyl)oxy]-	7492-67-3
182.	3-cyclohexene-1-carboxaldehyde, 4-methyl-	7560-64-7
183.	1-piperazinecarboxaldehyde	7755-92-2
184.	2-tridecenal	7774-82-5
185.	octanal, 2-methyl-	7786-29-0
186.	benzeneacetaldehyde, 2-methyl-	10166-08-2
187.	benzaldehyde, 3,5-dichloro-	10203-08-4
188.	1-naphthaleneacetaldehyde, 5,6,7,8-tetrahydro-	10484-23-8
189.	tridecanal	10486-19-8
190.	cyclohexanecarboxaldehyde, 2,2,6-trimethyl-	13155-57-2
191.	2,4-pentadienal, 5-phenyl-	13466-40-5
192.	2-thiophenecarboxaldehyde, 5-methyl-	13679-70-4
193.	5-pyrimidinecarboxaldehyde, 4-amino-6-chloro-	14160-93-1
194.	2-pentenal, 2-methyl-, (*E*)-	14250-96-5
195.	1*H*-indole-3-carboxaldehyde, 1-methoxy-2-phenyl-	14960-63-5
196.	propanal, 3-(dimethylamino)-2,2-dimethyl-	15451-14-6
197.	propanal, 2-methyl-2-(methylthio)-	16042-21-0
198.	butanal, 3-(methylthio)-	16630-52-7
199.	2,6-nonadienal, (*E,E*)-	17587-33-6
200.	2,6,9,11-dodecatetraenal, 2,6,10-trimethyl-, (*E,E,E*)-	17909-77-2
201.	3-cyclohexene-1-carboxaldehyde, 2-(1-methylallyl)-	18126-38-0
202.	benzenepropanal, 4-(1,1-dimethylethyl)-	18127-01-0
203.	propanal, 3-hydroxy-2-(hydroxymethyl)-2-methyl-	18516-18-2
204.	2-heptenal, (*E*)-	18829-55-5
205.	2-nonenal, (*E*)-	18829-56-6
206.	decanal, 2-methyl-	19009-56-4
207.	2-butenal, 2-ethyl-	19780-25-7
208.	nonanal, 2-benzylidene-	20175-19-3
209.	2-dodecenal, (*E*)-	20407-84-5
210.	2-octenal, (*Z*)-	20664-46-4
211.	cyclohexanecarboxaldehyde, 4-(1,1-dimethylethyl)-	20691-52-5

	Chemical Name	CAS No.
212.	7-decenal, (*Z*)-	21661-97-2
213.	4-decenal, (*Z*)-	21662-09-9
214.	2,6-dodecadienal, (*E,Z*)-	21662-13-5
215.	2,4-dodecadienal, (*E,Z*)-	21662-15-7
216.	2,4-dodecadienal, (*E,E*)-	21662-16-8
217.	benzeneacetaldehyde, α-(3-methylbutylidene)-	21834-92-4
218.	benzaldehyde, 4-(2-hydroxyethoxy)-	22042-73-5
219.	1*H*-pyrazole-4-carboxaldehyde, 3,5-dimethyl-1-phenyl-	22042-79-1
220.	undecanal, 2-methylene-	22414-68-2
221.	decanal, 2-methylene-	22418-65-1
222.	6-octenal, 3,7-dimethyl-2-methylene-	22418-66-2
223.	acetaldehyde, (methylthio)-	23328-62-3
224.	5,9-undecadienal, 2,6,10-trimethyl-	24048-13-3
225.	benzaldehyde, 4-(octyloxy)-	24083-13-4
226.	benzaldehyde, 4-azido-	24173-36-2
227.	pregn-4-ene-20-carboxaldehyde, 3-oxo-	24254-01-1
228.	benzeneacetaldehyde, α-2-propenyl-	24401-36-3
229.	benzaldehyde, 2-methoxy-5-nitro-	25016-02-8
230.	2-butenal, 2-[(acetyloxy)methyl]-	25016-79-0
231.	2,4-decadienal, (*E,E*)-	25152-84-5
232.	hexanal, 2-ethylidene-	25409-08-9
233.	butanal, 4-hydroxy-	25714-71-0
234.	acetaldehyde, (3,3-dimethylcyclohexylidene)-, (*Z*)-	26532-24-1
235.	acetaldehyde, (3,3-dimethylcyclohexylidene)-, (*E*)-	26532-25-2
236.	benzeneacetaldehyde, α-(2-methylpropylidene)-	26643-91-4
237.	benzaldehyde, 4-(heptyloxy)-	27893-41-0
238.	2-pentenal, 2-ethyl-4-methyl-	28419-86-5
239.	butanal, 2-(phenylmethylene)-	28467-92-7
240.	benzaldehyde, 4-propyl-	28785-06-0
241.	Indole-3-carboxaldehyde, 1,2-diphenyl-	29329-99-5
242.	3-cyclohexene-1-acetaldehyde, α, 4-dimethyl-	29548-14-9
243.	2,4-octadienal, (*E,E*)-	30361-28-5
244.	2,4-undecadienal, (*E,E*)-	30361-29-6
245.	4-decenal	30390-50-2
246.	nonadienal	30551-17-8
247.	4,7-Methano-1*H*-indenecarboxaldehyde, octahydro-	30772-79-3
248.	bicyclo[3.1.1]hept-2-ene-2-acetaldehyde, 6,6-dimethyl-	30897-75-7
249.	benzaldehyde, dichloro-	31155-09-6
250.	2-furanpropionaldehyde, β, 5-dimethyl-	31704-80-0
251.	*o*-Tolualdehyde, 4-[ethyl(2-hydroxy-3-phenoxypropyl)amino]-, carbanilate (ester)	32089-69-3
252.	3-butenal, 2-methyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	32791-31-4
253.	4,9-decadienal, 2,5,9-trimethyl	32803-39-7
254.	1H, 5*H*-benzo[ij]quinolizine-9-carboxaldehyde, 2,3,6,7-tetrahydro-	33985-71-6
255.	benzeneacetaldehyde, α-methyl-4-(1-methylethyl)-	34291-99-1
256.	6-octenal, 3-ethenyl-3,7-dimethyl-	34687-42-8
257.	6-octenal, 3-ethyl-3,7-dimethyl-	34687-43-9
258.	2-heptenal, 2-propyl-	34880-43-8
259.	2-hexenal, 5-methyl-2-(1-methylethyl)-	35158-25-9
260.	11-Tetradecenal, (*Z*)-	35237-64-0
261.	benzaldehyde, 3-(1,1,2,2-tetrafluoroethoxy)-	35295-35-3
262.	benzaldehyde, 4-(1,1,2,2-tetrafluoroethoxy)-	35295-36-4
263.	benzaldehyde, 4-[bis[2-(benzoyloxy)ethyl]amino]-2,5-dimethoxy-	35473-23-5
264.	11-tetradecenal, (*E*)-	35746-21-5
265.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-, (1α,2α,4β)-	36208-33-0
266.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-, (1α,2α,4β)-	36208-34-1
267.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-, (1α,2β,4β)-	36208-35-2
268.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-, (1α,2β,4β)-	36208-59-0
269.	2-thiophenecarboxaldehyde, 5-ethyl-	36880-33-8
270.	dodecanal, 2-methyl-	37596-36-4
271.	3-cyclohexene-1-carboxaldehyde, 4-[2-(3,3-dimethyloxiranyl)ethyl]-	37677-09-1
272.	3-cyclohexene-1-carboxaldehyde, 3-[2-(3,3-dimethyloxiranyl)ethyl]-	37677-10-4
273.	2-propenal, 3-bicyclo[2.2.1]hept-5-en-2-yl-2-methyl-	38284-42-3
274.	3-cyclohexene-1-carboxaldehyde, 2,4-dimethyl-6-propyl-	39067-36-2
275.	bicyclo[2.2.1]hept-5-ene-2-carboxaldehyde, 3-propyl-	39067-39-5
276.	8-nonenal	39770-04-2
277.	9-decenal	39770-05-3
278.	propanal, 3-hydroxy-2-(hydroxymethyl)	40364-80-5
279.	2,6-nonadienal, 3,7-dimethyl-	41448-29-7
280.	acetaldehyde, [(3,7-dimethyloctyl)oxy]-	41767-05-9
281.	acetaldehyde, (2-phenylethoxy)-	41847-88-5
282.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2β,5β)-	42507-55-1
283.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2β,5α)-	42507-56-2
284.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2α,5β)-	42507-57-3
285.	3-cyclohexene-1-carboxaldehyde, 4,5-dimethyl-2-(2-methyl-1-propenyl)-, (1α,2α,5α)-	42507-58-4
286.	benzaldehyde, 4-[bis(4-methylphenyl)amino]-	42906-19-4
287.	2-octenal, 2-methyl-, (*E*)-	49576-57-0
288.	benzaldehyde, 4-octyl-	49763-66-8
289.	benzaldehyde, 4-hexyl-	49763-69-1
290.	benzaldehyde, 4-(1-oxopropoxy)-	50262-48-1
291.	pentanal, 5,5-dimethoxy-	50789-30-5
292.	3-cyclohexene-1-carboxaldehyde, 3-(4-hydroxy-4-methylpentyl)-	51414-25-6
293.	5-heptenal, 2,2,6-trimethyl-	52279-00-2

	Chemical Name	CAS No.
294.	3-cyclohexene-1-carboxaldehyde, 1-methyl-3-(4-methyl-3-pentenyl)-	52474-60-9
295.	3-cyclohexene-1-carboxaldehyde, 3-(4-methyl-3-pentenyl)-	52475-89-5
296.	benzaldehyde, 3-(chloromethyl)-4-methoxy-	52577-09-0
297.	cyclohexenecarboxaldehyde, 2,6,6-trimethyl-	52844-21-0
298.	2-propenal, 2-bromo-3-methoxy-	52955-49-5
299.	acetaldehyde, (octyloxy)-	53498-14-5
300.	9-tetradecenal, (*Z*)-	53939-27-8
301.	11-hexadecenal, (*Z*)-	53939-28-9
302.	benzaldehyde, ethyl-	53951-50-1
303.	5,9-undecadienal, 2,6,10-trimethyl-	54082-68-7
304.	3-cyclohexene-1-carboxaldehyde, 5-(3-hydroxy-3-methylbutyl)-3-methyl-	54221-01-1
305.	2,4-tetradecadienal	54306-03-5
306.	cyclohexenecarboxaldehyde, (4-methyl-3-pentenyl)-	54323-26-1
307.	6-octenal, 7-methyl-3-methylene-	55050-40-3
308.	acetaldehyde, 1-ethyl-1, 3-dihydro-3,3-dimethyl-5-(phenylsulfonyl)-2*H*-indol-2-ylidene-	55203-66-2
309.	3,6-octadienal, 3,7-dimethyl-	55722-59-3
310.	4-hexenal, 2-ethenyl-2,5-dimethyl-	56134-05-5
311.	9-hexadecenal, (*Z*)	56219-04-6
312.	2,4,6-nonatrienal	56269-22-8
313.	2,6-octadienal, (*E,E*)-	56767-18-1
314.	7-hexadecenal, (*Z*)-	56797-40-1
315.	4-isoxazolecarboxaldehyde, 2,5-dihydro-2-methyl-5-oxo-3-phenyl-	56876-25-2
316.	benzeneacetaldehyde, α-(2-furanylmethylene)-	57566-60-2
317.	4-hexenal, 5-methyl-2-(1-methylethyl)-	58191-81-4
318.	2-naphthalenecarboxaldehyde, 3-ethyl-5,6,7,8-tetrahydro-5,5,8,8-tetramethyl-	58243-85-9
319.	6-undecenal	58296-81-4
320.	benzaldehyde, 2,4,6-tripropoxy-	58470-10-3
321.	2,6-decadienal, 3,7,9-trimethyl-	58605-97-3
322.	7-nonenal, 4,8-dimethyl-	58772-83-1
323.	2,3b-methano-3b*H*-cyclopenta 1,3 cyclopropa 1,2 benzene-4-carboxaldehyde, octahydro-7,7,8,8-tetramethyl-	59056-66-5
324.	propanal, 2-bromo-3,3-dimethoxy-	59453-00-8
325.	4,7-methano-1*H*-indene-6-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, (3aα,4α,6α,7α,7aα)-	59691-22-4
326.	4,7-methano-1*H*-indene-5-carboxaldehyde, 3a,4,5,6,7,7a-hexahydro-, (3aα,4α,5α,7α,7aα)-	59691-23-5
327.	2-pentenal, 5-(methylthio)-2-[(methylthio)methyl]-	59902-01-1
328.	2,6,11-dodecatrienal, 2,6-dimethyl-10-methylene-	60066-88-8
329.	2,4,8-decatrienal, 2,5,9-trimethyl-	60437-19-6
330.	6-hexadecenal, 14-methyl-, (*Z*)-	60609-58-2
331.	2-nonenal, (*Z*)-	60784-31-8
332.	2,4-tridecadienal	60996-24-5
333.	4-hexenal, 5-methyl-2-(1-methylethylidene)-, dihydro deriv.	61792-53-8
334.	2*H*-2,4a-methanonaphthalene-8-carboxaldehyde, 1,3,4,5,6,7-hexahydro-1,1,5,5-tetramethyl-, (2*S*)-	61826-54-8
335.	heptanal, 6-methoxy-2,6-dimethyl-	62439-41-2
336.	1H, 5*H*-benzo[ij]quinolizine-9-carboxaldehyde, 2,3,6,7-tetrahydro-8-hydroxy-	63149-38-7
337.	benzaldehyde, 2-hydroxy-5-nonyl-	63753-10-6
338.	2-tetradecenal	64461-99-0
339.	decanal, 2-ethylidene-	64825-20-3
340.	benzaldehyde, 4-[bis[2-(benzoyloxy)ethyl]amino]-	65072-25-5
341.	2-propenal, 3-(4-methoxyphenyl)-2-methyl-	65405-67-6
342.	4-decenal, (*E*)-	65405-70-1
343.	acetaldehyde, [(3,7-dimethyl-2,6-octadienyl)oxy]-, (*E*)-	65405-73-4
344.	cyclohexenebutanal, α,2,2,6-tetramethyl-	65405-84-7
345.	3-cyclohexene-1-carboxaldehyde, 4-(4-methyl-3-pentenyl)-1-(2-propenyl)-	66310-72-3
346.	benzenepropanal, 4-cyclopentyl-α-methyl-	66867-37-6
347.	3-cyclohexene-1-carboxaldehyde, 3,5,6-trimethyl-	67634-07-5
348.	bicyclo[2.2.2]octane-2-carboxaldehyde, 6-(1-methylethyl)-	67662-97-9
349.	3-cyclohexene-1-carboxaldehyde, 1-methyl-4-(4-methyl-4-pentenyl)-	67746-28-5
350.	butanal, 2-hydroxy-3-methyl-	67755-97-9
351.	2-propenal, 3-(2,2-dimethyl-6-methylenecyclohexyl)-2-methyl-	67801-13-2
352.	2-propenal, 2-methyl-3-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	67801-14-3
353.	octanal, 2-(2-furanylmethylene)-	67801-17-6
354.	2-naphthaleneacetaldehyde, 5,6,7,8-tetrahydro-	67801-18-7
355.	heptanal, 2-(2-furanylmethylene)-	67801-21-2
356.	3-cyclohexene-1-carboxaldehyde, 3,6-dimethyl-	67801-65-4
357.	benzaldehyde, 2,4,5-triethoxy-	67827-54-7
358.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 6-methyl-8-(1-methylethyl)-	67845-30-1
359.	acetaldehyde, (4-methylphenoxy)-	67845-46-9
360.	acetaldehyde, [4-(1, 1-dimethylethyl)-2-methylphenoxy]-	67845-53-8
361.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 1-methyl-4-(1-methylethyl)-	67890-79-3
362.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 4-methyl-1-(1-methylethyl)-	67920-94-9
363.	2-cyclohexene-1-carboxaldehyde, 6-[1-(1-methylethyl)-2-propenyl]-	67952-55-0
364.	propanal, 2-methyl-2-(methyldithio)-	67952-60-7
365.	3-cyclohexene-1-carboxaldehyde, 3, 5-dimethyl-	68039-48-5
366.	3-cyclohexene-1-carboxaldehyde, 2, 4-dimethyl-	68039-49-6
367.	hexanal, 3, 3, 5-trimethyl-	68039-71-4
368.	benzeneacetaldehyde, 4-ethyl-	68083-54-5
369.	benzeneacetaldehyde, 2, 4-dimethyl-	68083-55-6
370.	3-dodecenal	68083-57-8
371.	pentanal, 3-ethoxy-4-methyl-	68084-08-2
372.	cyclohexenecarboxaldehyde, dimethyl-	68084-52-6
373.	acetaldehyde, (3-hexenyloxy)-, (*Z*)-	68133-72-2
374.	3-cyclohexene-1-carboxaldehyde, 3,5-dimethyl-6-propyl-	68140-54-5
375.	3-cyclohexene-1-carboxaldehyde, 2,4, 6-trimethyl-1-(2-propenyl)-	68140-56-9

	Chemical Name	CAS No.
376.	3-cyclohexene-1-carboxaldehyde, 1-methyl-2-(1-methylethenyl)-	68140-59-0
377.	3,4-octadienal, 2-butyl-2-ethyl-5,7-dimethyl-	68140-60-3
378.	nonanal, 5-ethyl-2-methyl-	68141-14-0
379.	3-dodecenal, (*Z*)-	68141-15-1
380.	acetaldehyde, [(3,7-dimethyl-2,6-octadienyl)oxy]-	68213-87-6
381.	benzeneacetaldehyde, ar, α-diethyl-	68228-11-5
382.	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 5(or 6)-methyl-7(or 8)-(1-methylethyl)-	68259-31-4
383	bicyclo[2.2.2]oct-5-ene-2-carboxaldehyde, 3,5(or 3,6)-dimethyl-7(or 8)-(1-methylethyl)-	68259-32-5
384.	hexanal, 2,3,5,5-tetramethyl-	68391-29-7
385	acetaldehyde, (4-methoxyphenoxy)-	68426-09-5
386	benzaldehyde, 2,4-bis(1-methylethyl)-	68459-05-0
387.	butanal, 3-(heptyloxy)-2-oxo-	68555-32-8
388.	2-butenal, 2-methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	68555-62-4
389.	3-cyclohexene-1-carboxaldehyde, dimethyl-	68737-61-1
390.	2-naphthalenecarboxaldehyde, octahydro-8,8-dimethyl-	68738-94-3
391.	2-naphthalenecarboxaldehyde, octahydro-5,5-dimethyl-	68738-96-5
392.	acetaldehyde, [2,6-bis(1,1-dimethylethyl)-4-methylphenoxy]-	68797-73-9
393.	benzeneacetaldehyde, 3,4-dimethyl-	68844-97-3
394.	4,9-decadienal, 5,9-dimethyl-	68844-98-4
395.	3-cyclohexene-1-carboxaldehyde, 4-(4-hydroxy-3,4-dimethylpentyl)-	68891-88-3
396.	acetaldehyde, (2-furanylthio)-	68922-05-4
397.	2-naphthalenecarboxaldehyde, 1,2,3,4,5,6,7,8-octahydro-5,5-dimethyl-	68991-96-8
398.	2-naphthalenecarboxaldehyde, 1,2,3,4,5,6,7,8-octahydro-8,8-dimethyl-	68991-97-9
399.	2-furancarboxaldehyde, tetrahydro-5-oxo-, (*R*)-	70606-00-7
400.	4,9-decadienal, 4,8-dimethyl-	71077-31-1
401.	11,13-hexadecadienal, (Z,Z)-	71317-73-2
402.	dodecanal, 11(or 12)-methyl-	71566-52-4
403.	benzaldehyde, 4-[(2,3-dihydroxypropyl)ethylamino]-2-methyl-, sulfate (1:1) (salt)	71673-10-4
404.	1,5-cyclododecadienecarboxaldehyde, trimethyl-	71735-87-0
405.	3-cyclohexene-1-carboxaldehyde, 1,2,4(or 1,3,5)-trimethyl-	71832-78-5
406.	acetaldehyde, (2,6-dimethylphenoxy)-	72102-89-7
407.	benzaldehyde, 4-(acetyloxy)-3-ethoxy-	72207-94-4
408.	2-hexenal, 4(or 6)-methyl-2-propyl-	72208-09-4
409.	heptanal, 3,5,5-trimethyl-	72333-11-0
410.	5-octenal, 2,6-dimethyl-	72845-35-3
411.	cinnamaldehyde, still bottoms	72869-33-1
412.	acetaldehyde, (decyloxy)-	72894-07-6
413.	10-undecenal, 2-ethylidene-	72894-14-5
414.	2,12-tridecadienal	72894-15-6
415.	benzeneacetaldehyde, 3-methyl-	72927-80-1
416.	acetaldehyde, [(3a,4,5,6,7,7a-hexahydro-4,7-methano-1*H*-inden-6-yl)oxy]-	72927-85-6
417.	3-cyclohexene-1-carboxaldehyde, 5-(2-hydroxy-2-methylpropylidene)-	72927-97-0
418.	4,9-decadienal, 2,4,8-trimethyl-	72928-00-8
419.	acetaldehyde, [(3a,4,5,6,7,7a-hexahydro-4,7-methano-1*H*-inden-5-yl)oxy]-	72928-15-5
420.	2-cyclohexene-1-acetaldehyde, α, 2-dimethyl-5-(1-methylethenyl)-	72928-28-0
421.	undecanal, 2-methyl-2-(2-propenyl)-	72928-37-1
422.	acetaldehyde, [4-(1,1-dimethylethyl)phenoxy]-	72928-50-8
423.	3-cyclohexene-1-carboxaldehyde, 2-(2-hydroxy-2-methylpropylidene)-	72939-53-8
424.	2-cyclohexene-1-acetaldehyde, 2-methyl-5-(1-methylethenyl)-	72983-68-7
425.	2-butenal, 2,3-dimethyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-	73507-49-0
426.	3-butenal, 2,3-dimethyl-4-(2,6,6-trimethyl-1-cyclohexen-1-yl)-	73507-50-3
427.	4,7-methano-1*H*-indene-2-carboxaldehyde, octahydro-5-methoxy-	86803-90-9
428.	1*H*-indenecarboxaldehyde, 2,3,3a,4,5,6- hexahydro-1,3,3-trimethyl-	94406-15-2
429.	biphenyl, polybromo-	No CAS No.
430.	bromophenol (br1-br2, br5)	No CAS No.
431.	carbamate, bis(dibromopropyl)-	No CAS No.
432.	phosphite, bis(2,3-dibromopropyl)-	No CAS No.
433.	biphenyl, polybromo- (br8-br10)	No CAS No.
434.	phosphite,	No CAS No.
435.	toluene, tetrabromochloro-	No CAS No.
436.	brominated terphenyls	No CAS No.
437.	carbamate, dibromopropyl-	No CAS No.
438.	phosphite, allyl bis(2,3-dibromopropyl)-	No CAS No.
439.	phosphoryl chloride, bis(dibromopropyl)-	No CAS No.
440.	1-propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7
441.	phenol, pentabromo-	608-71-9
442.	brominated terphenyls	623-27-8
443.	brominated terphenyls	626-19-7
444.	oxetane, 3,3-bis(bromomethyl)-	2402-83-7
445.	oxirane, bromoethyl	3132-64-7
446.	brominated terphenyls	3365-02-4
447.	brominated terphenyls	3365-03-5
448.	benzene, pentabromo(2-propenyloxy)-	3555-11-1
449.	brominated terphenyls	4266-99-3
450.	brominated terphenyls	4456-49-9
451.	phenol, 2,6-dibromo-4-[1-(3-bromo-4-hydroxyphenyl)-1-methylethyl]-	6386-73-8
452.	1,2-benzenedicarboxylic acid, bis(2,3-dibromopropyl) ester	7415-86-3
453.	brominated terphenyls	10273-74-2
454.	phosphonium, 1,2-ethanediylbis[tris(2-cyanoethyl)]-, dibromide	10310-38-0
455.	oxirane, (2-bromoethyl)-	13287-42-8
456.	1,1'-biphenyl, 2,2,3,3',4,4',5,5',6,6'-decabromo-	13654-09-6
457.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, aluminum salt (3:2)	13654-74-5

	Chemical Name	CAS No.
458.	fumaric acid, bis(pentabromophenyl) ester	15108-51-7
459.	4,7-methano-1*H*-indene, 1,2-dibromo-4,5,6,7,8,8-hexachloro-2,3,3a,4,7,7a-hexahydro-	18300-04-4
460.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, dipotassium salt	18824-74-3
461.	brominated terphenyls	19799-37-2
462.	brominated terphenyls	20653-70-7
463	ethanol, 2-(2,4,6-tribromophenoxy)-	23976-66-1
464.	fumaric acid, bis(2,4,6-tribromophenyl) ester	24138-34-9
465.	phenol, tribromo-	25376-38-9
466.	ethene, dibromo	25429-23-6
467.	poly[oxy(2,6-dibromo-1,4-phenylene)]	26023-27-8
468.	benzene, tribromo(2-propenyloxy)-	26762-91-4
469.	1,1'-biphenyl, nonabromo-	27753-52-2
470.	1,1'-biphenyl, ar, ar, ar, ar, ar', ar', ar', ar'-octabromo-	27858-07-7
471.	brominated terphenyls	29605-98-9
472.	phenol, bromo	32762-51-9
473.	phenol, 4,4'-(1-methylethylidene)bis 2,6-dibromo-, diacetate	33798-02-6
474.	brominated terphenyls	36719-77-4
475.	toluene, 2-chloro, tetrabromo-	39569-21-6
476.	phenol, 4,4'-sulfonylbis(2,6-dibromo)-	39635-79-5
477.	brominated terphenyls	40817-03-6
478.	phenol, dibromo-, phosphate (3:1)	49690-63-3
479.	brominated terphenyls	51211-09-7
480.	1-propanol, 2,3-dibromo, carbamate	55190-46-0
481.	brominated terphenyls	57313-42-5
482.	brominated terphenyls	57313-44-7
483.	brominated terphenyls	57313-47-0
484.	phenol, 2,3,4,6-tetrabromo-5-methyl-	58169-99-6
485.	ethanol, 2-(pentabromophenoxy)	60593-02-4
486.	carbamic acid, bis(2,3-dibromopropyl)-, ethyl ester	60728-46-3
487.	2,4,8,10-tetraoxa-3,9-diphaspiro[5.5]undecane, 3,9-bis[3-bromo-2,2-bis(bromomethyl)propoxy]-, 3,9-dioxide	61090-89-9
488.	brominated terphenyls	65449-00-5
489.	phosphoric acid, 2,2-bis(bromomethyl)-3-chloropropyl bis[2-chloro-1-(chloromethyl)ethyl] ester	66108-37-0
490.	benzene, dibromo(2-propenyloxy)-	66741-65-9
491.	diphenoxyethane, decabromo	66797-39-5
492.	phenol, 2,4,6-tribromo-, carbonate (2:1)	67990-32-3
493.	phenol, pentabromo, aluminum salt	68084-29-7
494.	1,2-benzenedicarboxylic acid, 3,4,5,6-tetrabromo-, magnesium salt (1:1)	68084-31-1
495.	2-Butenedioic acid (Z)-, bis(pentabromophenyl) ester	68091-86-1
496.	benzene, pentabromo[2-(tetrabromophenoxy)ethoxy]-	68299-26-3
497.	benzene, pentabromo[2-(tetrabromochlorophenoxy)ethoxy]-	68299-27-4
498.	benzene, 1,3,5-tribromo-2-(2-bromoethoxy)-	68413-71-8
499.	benzene, brominated chlorinated	68583-99-3
500.	hexanedioic acid, bis[3-bromo-2-(bromomethyl)-2-(hydroxymethyl)propyl] ester	70776-34-0
501.	brominated terphenyls	73206-29-8
502.	brominated terphenyls	73206-30-1
503.	brominated terphenyls	73206-31-2
504.	brominated terphenyls	73206-32-3
505.	brominated terphenyls	73206-33-4
506.	brominated terphenyls	73216-03-2
507.	brominated terphenyls	75594-47-7
508.	brominated terphenyls	89961-07-9
509.	brominated terphenyls	89961-08-0
510.	brominated terphenyls	89961-09-1
511.	brominated terphenyls	89961-10-4
512.	brominated terphenyls	89961-11-5
513.	brominated terphenyls	89961-12-6
514.	brominated terphenyls	89961-13-7
515.	brominated terphenyls	95918-83-5
516.	brominated terphenyls	95918-85-7
517.	brominated terphenyls	95919-18-9
518.	brominated terphenyls	95919-20-3
519.	brominated terphenyls	95919-22-5
520.	brominated terphenyls	95919-23-6
521.	brominated terphenyls	101710-68-3
522.	brominated terphenyls	108802-71-7
523.	brominated terphenyls	122216-73-3
524.	Naphthalene, 1-isocyanato-	86-84-0
525.	benzene, 1,1'-methylenebis(4-isocyanato-3-methyl)-	139-25-3
526.	benzene, 1-isocyanato-3-methyl-	621-29-4
527.	benzene, 1-isocyanato-2-methoxy-	700-87-8
528.	sulfuryl chloride isocyanate	1189-71-5
529.	propane, 2-isocyanato-2-methyl-	1609-86-5
530.	propane, 2-isocyanato-	1795-48-8
531.	diazene, (4-isocyanatophenyl)phenyl-	1942-61-6
532.	ethane, 1-chloro-2-isocyanato-	1943-83-5
533.	hexadecane, 1-isocyanato-	1943-84-6
534.	hexane, 1-isocyanato-	2525-62-4
535.	benzene, 1,1'-methylenebis(2-isocyanato)-	2536-05-2
536.	cyclohexane, 1,4-diisocyanato-	2556-36-7
537.	benzonitrile, 4-isothiocyanato-	2719-32-6
538.	acetyl isocyanate, trichloro-	3019-71-4
539.	octane, 1-isocyanato-	3158-26-7

	Chemical Name	CAS No.
540.	Naphthalene, 1,5-diisocyanato-	3173-72-6
541.	benzene, 1-chloro-2-isocyanato-	3320-83-0
542.	benzene, 1-isocyanato-2-nitro-	3320-86-3
543.	benzene, 1-isocyanato-3-nitro-	3320-87-4
544.	benzene, 1,3-bis(isocyanatomethyl)-	3634-83-1
545.	benzene, 1,1'-oxybis(4-isocyanato)-	4128-73-8
546.	dodecane, 1-isocyanato-	4202-36-4
547.	benzene, 1,4-dichloro-2-isocyanato-	5392-82-5
548.	benzene, 1-ethoxy-2-isocyanato-	5395-71-1
549.	benzene, 1-isocyanato-4-methoxy-	5416-93-3
550.	ethanamine, 2-isocyanato-*N*-(2-isocyanatoethyl)-*N*-nitro-	7046-61-9
551.	cyclohexane, 1,4-bis(isocyanatomethyl)-	10347-54-3
552.	formamide, *N*-ethenyl-	13162-05-5
553.	benzene, 4-isocyanato-1-methyl-2-nitro-	13471-69-7
554.	silane, (3-isocyanatopropyl)trimethoxy-	15396-00-6
555.	isocyanic acid, (2,3,5,6-tetrachloro-p-phenylene)dimethylene ester	16325-36-5
556.	acetic acid, isocyanato-, butyl ester	17046-22-9
557.	silane, chloro(3-isocyanatopropyl)dimethyl-	17070-70-1
558.	1,3-diazetidine-2, 4-dione, 1,3-bis[4-[(4-isocyanatophenyl)methyl]-phenyl]-	17589-24-1
559.	benzenesulfonic acid, 4-isothiocyanato-, sodium salt	17614-69-6
560.	benzene, 1-isocyanato-3-methoxy-	18908-07-1
561.	isocyanic acid, (2,4-dioxo-1,3-uretidinediyl)bis[methylene(3,5,5-trimethyl-3,1-cyclohexylene)] ester	23370-68-5
562.	silane, triethoxy(3-isocyanatopropyl)-	24801-88-5
563.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,2,3-propanetriyl ester	28470-82-8
564.	benzene, 1-chloro-4-(isocyanatophenoxy)-	30087-46-8
565.	1,3-diazetidin-2-one, 1,3-bis[4-[(4-isocyanatophenyl)methyl]phenyl]-4-[[4-[(4-isocyanatophenyl)methyl]phenyl]imino]-	31107-36-5
566.	benzene, 1-ethoxy-4-isocyanato-	32459-62-4
567.	1,5-naphthalenedisulfonic acid, 3-isothiocyanato-, disodium salt	35688-63-2
568.	cyclohexane, 1,3-bis(isocyanatomethyl)-	38661-72-2
569.	benzene, 2-isocyanato-1,4-dimethyl-	40397-98-6
570.	benzonitrile, 4-isocyanato-	40465-45-0
571.	benzoic acid, 2-(formylamino)-, methyl ester	41270-80-8
572.	cyclohexane, bis(isocyanatomethyl)-	42170-25-2
573.	benzenesulfonic acid, 5-(acetylamino)-2-[2-(4-isothiocyanato-2-sulfophenyl)ethenyl]-, disodium salt	51023-76-8
574.	2-propenoic acid, 2-[[[(3-isocyanatomethylphenyl)amino]carbonyl]oxy]ethyl ester	54554-36-1
575.	carbamic acid, (3-isocyanatomethylphenyl)-, 2-ethylhexyl ester	54634-94-5
576.	urea, *N,N'*-bis[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-	55525-54-7
577.	carbamic acid, (3-isocyanatomethylphenyl)-, 2-ethylhexyl ester	58240-57-6
578.	carbamic acid, (3-isocyanatomethylphenyl)-, oxydi-2,-ethanediyl ester	60732-52-7
579.	spiro[isobenzofuran-1(3*H*), 9'[3H]xanthen]-3-one, 3',6'-dihydroxy-5-isothiocyanato-, hydrochloride	63469-13-6
580.	carbamic acid, 4-[(4-isocyanatocyclohexyl)methyl cyclohexyl]-, oxydi-1,2-ethanediyl ester	65087-21-0
581.	imidodicarbonic diamide, 2,2'-[methylenebis(2-chloro-4,1-phenylene)]bis[*N,N'*-bis(3-isocyanatomethylphenyl)]-	65104-99-6
582.	carbamic acid, (3-isocyanatomethylphenyl)-, 1-methyl-1,3-propanediyl ester	65105-00-2
583.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,4-butanediyl ester	65105-02-4
584.	1,3, 5-triazine-2,4,6(1*H*,3*H*, 5*H*)-trione, 1,3,5-tris[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-	67873-91-0
585.	benzenamine, *N,N*-methanetetraylbis[3-isocyanato-2,4,6-tris(1-methylethyl)]-	68083-39-6
586.	carbamic acid, (3-isocyanatomethylphenyl)-, 1,2-ethanediyl ester	68092-73-9
587.	carbamic acid, (3-isocyanatomethylphenyl)-, oxybis(1-methyl-2,1-ethanediyl) ester	68092-74-0
588.	carbamic acid, (3-isocyanatomethylphenyl)-, [[(diethoxyphosphinyl)methyl]imino]di-2,1-ethanediyl ester	68133-14-2
589.	hexanoic acid, [2-ethyl-2-[[[[[5-isocyanato-1(or 5)-(methoxycarbonyl)pentyl]amino]carbonyl]oxy]methyl]-1,3-propanediyl]	68310-46-3
590.	carbamic acid, (3-isocyanatomethylphenyl)-, 1-methyl-1,3-propanediyl ester	68366-14-3
591.	1,3-diazetidine-2,4-dione, 1,3-bis(4-isocyanato-3-methylphenyl)-	68555-56-6
592.	carbamic acid, (5-isocyanato-2-methylphenyl)-, 2-ethylhexyl ester	68938-61-4
593.	carbamic acid, [(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-, 2-ethyl-2-[[[[[(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]	68975-82-6
594.	carbamic acid, (5-isocyanato-1,3,3-trimethylcyclohexyl)methyl)-, oxydi-2,1-ethanediyl ester	68975-84-8
595.	hexanoic acid, 2,6-diisocyanato-, 2-isocyanatoethyl ester	69878-18-8
596.	undecane, 1,6,11-triisocyanato-	70198-24-2
597.	urea, *N*-[[(aminophenyl)methyl]phenyl]-*N'*-(3-isocyanatomethylphenyl)-	71106-52-0
598.	urea, *N*-(3-isocyanatomethylphenyl)-*N'*-[[[4-[[[(3-isocyanatomethylphenyl)amino]carbonyl]amino]phenyl]methyl]phenyl]-	71130-76-2
599.	carbamic chloride, ethyl(5-isocyanato-2-methylphenyl)-	71832-33-2
600.	carbamic acid, [4-[(4-isocyanatophenyl)methyl]phenyl]-, oxydi-2,1-ethanediyl ester	71832-70-7
601.	carbamic acid, [(5-isocyanato-1,3,3-trimethylcyclohexyl)methyl]-, 2-butoxyethyl ester	72152-85-5
602.	benzene, 2-isocyanato-4-[(4-isocyanatophenyl)methyl]-1-methyl-	75790-84-0
603.	benzene, 1-isocyanato-2-[(4-isocyanatophenyl)thio]-	75790-87-3
604.	benzene, 1-chloro-4-(phenylsulfonyl)-	80-00-2
605.	benzenamine, 2-(methylsulfonyl)-4-nitro-	96-74-2
606.	benzene, 1-chloro-4-(methylsulfonyl)-2-nitro-	97-07-4
607.	benzene, 1-chloro-4-(methylsulfonyl)-	98-57-7
608.	1,4-oxathiane, 4,4-dioxide	107-61-9
609.	benzene, 1,1'-sulfonylbis(4-fluoro-3-nitro)-	312-30-1
610.	benzene, 1,1'-sulfonylbis(4-fluoro)	383-29-9
611.	methane, bis[(trifluoromethyl)sulfonyl]-	428-76-2
612.	propane, 1,1'-sulfonylbis-	598-03-8
613.	butane, 1,1'-sulfonylbis-	598-04-9
614.	benzenamine, 3,3'-sulfonylbis-	599-61-1
615.	benzene, 1,1'-sulfonylbis(4-methyl)-	599-66-6
616.	benzene, 1-methyl-4-(phenylsulfonyl)-	640-57-3
617.	thiophene, tetrahydro-3-methyl-, 1,1-dioxide	872-93-5
618.	thiophene, 2,5-dihydro-3-methyl-, 1,1-dioxide	1193-10-8
619.	benzene, 1,1'-sulfonylbis(3-nitro)-	1228-53-1
620.	benzene, 1,4-dimethyl-2-[(4-methylphenyl)sulfonyl]-	1916-96-2
621.	thiophene, 2,5-dihydro-3-(4-methyl-3-pentenyl)-, 1,1-dioxide	2083-32-1

	Chemical Name	CAS No.
622.	sulfone, 4-chloro-2-nitrophenyl methyl	2163-97-5
623.	methanol, [(4-methylphenyl)sulfonyl]-	2182-69-6
624.	methane, sulfonylbis(trichloro)-	3064-70-8
625.	thiophene, 3,3,4,4-tetrachlorotetrahydro-, 1,1-dioxide	3737-41-5
626.	benzene, 1,1'-sulfonylbis(2,4-dimethyl)-	5184-75-8
627.	phenol, 2-[(4-hydroxyphenyl)sulfonyl]-	5397-34-2
628.	3-thiophenamine, tetrahydro-, 1,1-dioxide	6338-70-1
629.	1-propanamine, 2-[2-[[4-[3-(4-chlorophenyl)-4,5-dihydro-1*H*-pyrazol-1-yl]phenyl]sulfonyl]ethoxy]-*N,N*-dimethyl-	6608-82-8
630.	ethanol, 2-[(3-amino-4-methoxyphenyl)sulfonyl]-	7425-81-2
631.	9*H*-thioxanthene-3,6-diamine, 10,10-dioxide	10215-25-5
632.	benzene, 1,1'-sulfonylbis(2,4,6-trinitro)-	10580-80-0
633.	benzenamine, 4,4'-[sulfonylbis(4,1-phenyleneoxy)]bis-	13080-89-2
634.	benzenamine, 2-chloro-4-(methylsulfonyl)-	13244-35-4
635.	3-benzothiazolineethanol, 4,5,6,7-tetrahydro-2-imino-.α.-[p-(methylsulfonyl)phenyl]-	13581-52-7
636.	octyl disulfone	13603-70-8
637.	1*H*-pyrazole, 3-(4-chlorophenyl)-4,5-dihydro-1-[4-(methylsulfonyl)phenyl]-	14295-72-8
638.	phenol, 2,2'-sulfonylbis-	15038-67-2
639.	thiophene, 3,4-dibromotetrahydro-, 1,1-dioxide	15091-30-2
640.	phenol, 2,2'-sulfonylbis[4-(1,1,3,3-tetramethylbutyl)]-	15452-89-8
641.	benzene, 1-chloro-2-(methylsulfonyl)-4-nitro-	21081-74-3
642.	benzenamine, 4-(methylsulfonyl)-2-nitro-	21731-56-6
643.	1,1'-biphenyl, 4,4'-bis[(4-chlorophenyl)sulfonyl]-	22287-56-5
644.	ethanol, 2-[(4-methylphenyl)sulfonyl]-	22381-54-0
645.	aniline, 4-(ethylsulfonyl)-2-nitro-	23306-60-7
646.	propionitrile, 3-[*N*-(2-hydroxyethyl)-*p*-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]anilino]-	24170-48-7
647.	phenol, 4-[(4-aminophenyl)sulfonyl]-	25963-47-7
648.	1,3-dithiane, 1,1,3,3-tetraoxide	26413-18-3
649.	ethanol, 2-[(4-hydrazinophenyl)sulfonyl]-	26505-12-4
650.	benzene, 1,1'-sulfonylbis(3,4-dimethyl)	28361-43-5
651.	aniline, 5-chloro-2-(methylsulfonyl)-	29124-54-7
652.	benzenamine, 3,3'-[sulfonylbis(4,1-phenyleneoxy)]bis-	30203-11-3
653.	benzothiazole, 2-[(tribromomethyl)sulfonyl]-	31274-42-7
654.	thiophene, 3-(bromomethyl)-2,5-dihydro-, 1,1-dioxide	31554-48-0
655.	ethanamine, 2-[2-[[4-[3-(4,5-dichloro-2-methylphenyl)-4,5-dihydro-1*H*-pyrazol-1-yl]phenyl]sulfonyl]ethoxy]-*N,N*-dimethyl	35441-18-0
656.	benzene, 1,2-dichloro-4-(methylsulfonyl)-	38452-47-0
657.	1*H*-pyrazol-3-amine, 4-[[4-(ethylsulfonyl)-2-nitrophenyl]azo]-5-methyl-1-phenyl-	38658-94-5
658.	phenol, 4,4'-sulfonylbis(2,6-dibromo)-	39635-79-5
659.	2-butyn-1-ol, 4-[(tetrahydro-3-thienyl)oxy]-, S,S-dioxide	40456-28-8
660.	benzene, [bis[(trifluoromethyl)sulfonyl]methyl]-	40906-82-9
661.	ethanol, 2-[(7-amino-1-naphthalenyl)sulfonyl]-	43001-81-6
662.	benzoxazole, 2,2'-(1,4-naphthalenediyl)bis[5-(ethylsulfonyl)]-	43115-21-5
663.	benzenamine, 4,4'-[[(4-methylphenyl)sulfonyl]methylene]bis(*N,N*-dimethyl)-	49630-05-9
664.	benzenamine, 2,2'-[sulfonylbis(4,1-phenyleneoxy)]bis-	52338-52-0
665.	ethanol, 2-[(4-methoxy-3-nitrophenyl)sulfonyl]-	52398-83-1
666.	acetonitrile, (dodecylsulfonyl)-	52821-30-4
667.	thiophene, 3-bromo-2,3-dihydro-, 1,1-dioxide	53336-42-8
668.	3*H*-indole, 2,3,3-trimethyl-5-(phenylsulfonyl)-	55203-59-3
669.	2-butanone, 3-methyl-, [4-(phenylsulfonyl)phenyl]hydrazone	55203-60-6
670.	1*H*-benzimidazolium, 2-(6-methoxy-2-benzofuranyl)-1,3-dimethyl-5-(methylsulfonyl)-	55911-28-9
671.	benzene, 1,1'-sulfonylbis[4-(1-methylethyl)]-	57913-35-6
672.	propane, 1,3-bis(ethenylsulfonyl)-2,2-bis[(ethenylsulfonyl)methyl]-	60345-53-1
673.	1(2*H*)-quinolineethanol, 6-[[2-chloro-4-(methylsulfonyl)phenyl]azo]-3,4-dihydro-2,2,4,7-tetramethyl-	63134-03-2
674.	3-pyridinecarbonitrile, 5-[[2-chloro-4-(methylsulfonyl)phenyl]azo]-4-methyl-2,6-bis[[3-(2-phenoxyethoxy)propyl]amino]-	63281-10-7
675.	disulfone, dihexyl	63450-69-1
676.	propanenitrile, 3-[ethyl[4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]phenyl]amino]-	63467-01-6
677.	ethanol, 2,2'-[[4-[[6-(methylsulfonyl)-2-benzothiazolyl]azo]phenyl]imino]bis-	63467-02-7
678.	thiophene, 4-bromo-2,3-dichlorotetrahydro-, 1,1-dioxide	65243-01-8
679.	propanenitrile, 3-[ethyl[3-methyl-4-[[2-(methylsulfonyl)-4-nitrophenyl]azo]phenyl]amino]-	67906-60-9
680.	benzenesulfonic acid, 3-[[4-[ethyl(phenylmethyl)amino]phenyl]azo]-4-[(4-methylphenyl)sulfonyl]-	68400-40-8
681.	benzenamine, 4-[(1-ethyl-2-methyl-1*H*-indol-3-yl)[(4-methylphenyl)sulfonyl]methyl]-*N,N*-dimethyl-	68912-03-8
682.	benzenamine, 5-chloro-2-[(4-methylphenyl)sulfonyl]-	70146-09-7
683.	1*H*-pyrazol-5-amine, 3-methyl-4-[[4-(methylsulfonyl)-2-nitrophenyl]azo]-1-phenyl-	70210-09-2
684.	3*H*-pyrazol-3-imine, 2,4-dihydro-5-methyl-4-[[4-(methylsulfonyl)-2-nitrophenyl]azo]-2-phenyl-	70528-91-5
685.	hydrazine, [4-(phenylsulfonyl)phenyl]-	70714-83-9
686.	3*H*-pyrazol-3-imine, 4-[[4-(ethylsulfonyl)-2-nitrophenyl]azo]-2,4-dihydro-5-methyl-2-phenyl-	70833-53-3

1.3.e *Removals.* No chemicals were removed from the Priority List as a result of EPA responses to Committee recommendations.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: "**** make such revisions in the [priority] list as it determines to be necessary and *** transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by designating two chemicals (4-vinylcyclohexane and sodium cyanide) that were previously recommended with intent-to-designate and adding one chemical (*N*-phenyl-1-naphthylamine) and four chemical groups (IRIS chemicals, aldehydes, sulfones and substantially produced chemicals in need of subchronic tests). These revisions are listed in Table 1 above.

The Priority List (Table 2) includes designated, recommended with intent-to-designate and recommended chemicals and chemical groups. Individual chemicals in Priority List chemical groups are listed in Table 1 or the paragraph immediately following Table 1 of this and previous Reports with appropriate notes that minimize

ambiguities related to TSCA section 8(a) and 8(d) reporting requirements. Table 2 containing the section 4(e) priority list follows:

TABLE 2.—THE SECTION 4(E) PRIORITY LIST

Entry	Action	Date
Brominated flame retardants	designated	November 1989
4-vinylcyclohexene	designated	November 1990
sodium cyanide	designated	November 1990
IRIS chemicals	designated	November 1990
chloroalkyl phosphates	recommended with intent-to-designate	November 1988
isocyanates	recommended with intent-to-designate	May 1990
aldehydes	recommended with intent-to-designate	November 1990
imidazolium quaternary ammonium compounds	recommended	May 1988
ethoxylated quaternary ammonium compounds	recommended	May 1988
butyraldehyde	recommended	November 1988
brominated flame retardants	recommended	November 1989
brominated flame retardants	recommended	May 1990
alkyl phosphates	recommended	May 1990
IRIS chemicals	recommended	November 1990
N-phenyl-1-naphthylamine	recommended	November 1990
sulfones	recommended	November 1990
substantially produced chemicals in need of subchronic tests	recommended	November 1990

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotated list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

(5) Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1987, 52 FR 19020–19026.

(6) Twenty-first Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 20, 1987, 52 FR 44830–44837.

(7) Twenty-second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 20, 1988, 53 FR 18196–18210.

(8) Twenty-third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 16, 1988, 53 FR 46262–46278.

(9) Twenty-fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, July 27, 1989, 54 FR 31248–31249.

(10) Twenty-fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, December 12, 1989, 54 FR 51114–51130.

(11) Twenty-sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, June 5, 1990, 55 FR 23050–23062.

Chapter 2—Recommendations of the Committee

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is revising the Priority List by designating two chemicals that were previously recommended with intent-to-designate and adding one chemical and four chemical groups (see Table 1). The recommendation of these chemicals is made after considering the factors identified in section 4(e)(1)(A) and other relevant information, such as the chemical testing information deficiencies of Member Agencies.

2.2 *Designated chemicals*—2.2.a *4-Vinylcyclohexane.* 4-Vinylcyclohexane was designated because there were no TSCA section 8(d) submissions that satisfied the National Institute for Occupational Safety and Health nominated testing information deficiencies. The rationale for the original recommendation with intent-to-designate appeared in the Committee's 25th Report (54 FR 51114, December 12, 1989).

2.2.b *Sodium cyanide.* Sodium cyanide was designated and the testing recommendations changed because discussions among the Department of Interior, the EPA and industry identified additional testing information deficiencies and because there was a general understanding that there were no TSCA section 8(d) submissions that were likely to satisfy the testing information deficiencies nominated by the Department of Interior. The rationale for the original recommendation with intent-to-designate appeared in the Committee's 26th Report (55 FR 23050, June 5, 1990).

2.2.c. *IRIS chemicals.* At the request of EPA, the Committee reviewed a subset of chemicals that are listed on the Agency's Integrated Risk Information System (IRIS). IRIS is an electronic database, prepared and maintained by EPA, that contains health risk and EPA regulatory information on chemical substances. IRIS was developed for EPA staff in response to a growing demand for consistent risk information on chemical substances for use in decisionmaking and regulatory

activities. Although IRIS was designed for EPA staff, it is also accessible to state and local environmental health agencies, private citizens, libraries and organizations through Dialcom, Inc.'s electronic mail telecommunications system. For more information contact IRIS User Support in EPA's Environmental Criteria and Assessment Office, Cincinnati, Ohio (513/569-7254 or FTS 684-7254).

The chemicals that EPA nominated to the Committee for health effects testing information deficiencies are those chemicals for which the Agency has determined that there is a lack of confidence in the available health effects data. The EPA believes that the development of reliable health effects data will increase the confidence in the data and reduce the uncertainties in the assessment of risk. EPA nominated the IRIS chemicals to the Committee to recommend testing that would provide reliable data.

The Committee-activated comprehensive networking and information exchange processes were used to facilitate communication and coordination of chemical testing as intended by Congress and suggested by industry. The Committee considered unpublished studies in Member Agency's files, and past, present and future Member Agency activities. The Committee discussed studies conducted by NTP and EPA's Health Effects Research Laboratory and Environmental Research Laboratories, studies sponsored by NIOSH, studies used by OSHA and CPSC, studies submitted under TSCA as well as studies in FDA's files. The Committee learned about ongoing international activities, about ATSDR's data research needs, about EPA's Toxics Release Inventory (TRI) information, about Health Hazard Evaluations and Hazard Evaluation and Technical Assistance Reports, walk-through surveys, etc., conducted by NIOSH, uses considered by the FDA, activities under other statutes, and so on. As part of the Committee's efforts to comprehensively consider testing information deficiencies, the Committee reviewed available information on physical/chemical properties and persistence as well as ecological effects and identified a number of chemical fate and aquatic toxicity testing information deficiencies. EPA's Neurobehavioral Toxicology Branch also reviewed these chemicals for potential neurotoxicology concerns and the Committee identified neurotoxicity testing deficiencies.

EPA nominated several IRIS chemicals to the ITC to take advantage of (1) The Committee's comprehensive networking and information exchange capabilities that conserve resources and promote cost-effective testing required or sponsored by U.S. Government organizations and (2) the opportunity to obtain recent production and exposure information and unpublished health and safety studies that are automatically required under TSCA section 8(a) and 8(d), respectively, for any Committee recommendation. For 13 IRIS chemicals, the Committee has comprehensively assessed available health effects, chemical fate and ecological effects information. As a result of these assessments, the Committee is recommending 8 chemicals for testing (see Table 1), returning 2 chemicals to the EPA because the Committee's review identified health effects data that appear to be sufficient to reduce the uncertainty associated with risk assessments (vanadium pentoxide, CAS 1314-62-1 and hydrogen sulfide, CAS 7783-06-4), returning 2 chemicals for which there are uncertainties related to testing under TSCA (HMX, CAS 2691-41-0 and ammonium sulfamate, CAS 7773-06-0), and returning 1 chemical for which domestic production is being substantially reduced (CFC-113, CAS 76-13-1). The Committee identified algal toxicity and aquatic invertebrate acute and chronic toxicity testing deficiencies for vanadium pentoxide, but is not recommending testing at this time because, in a future Report it plans to recommend such testing for an inorganic chemical group. The EPA requested that the Committee designate 6 of the 8 IRIS chemicals. Five of the IRIS chemicals that were listed in Title III of the 1990 amendments of the Clean Air Act (acetophenone, acrylic acid, *N,N*-dimethylaniline, 2,4-dinitrophenol and phenol) were recommended for inhalation testing to reduce the uncertainty associated with risk assessments that need to be developed for these chemicals. The Committee is continuing to review information on numerous IRIS chemicals, including several that are listed in the Clean Air Act.

Summary of recommended studies. Recommended studies are summarized in Table 1 above.

Acrylic Acid

Physical and Chemical Information

CAS Number: 79-10-7
Synonyms and Trade Names: Acroleic acid, 2-propenoic acid.
Empirical Formula: $C_3H_4O_2$
Molecular Weight: 72.1
Physical State at 25° C: Liquid
Description of Chemical: Corrosive liquid, acrid odor and fumes (Ref. 164, Windholz et al., 1983)
Melting Point: 13.5 (Ref. 96, Lide, 1990)
Boiling Point: 141.6 (Ref. 34, Daubert and Danner, 1985)
Vapor Pressure: 4.00 mm Hg @ 25° C (Ref. 34, Daubert and Danner, 1985)
Specific Gravity: 1.0621 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 0.161 (Ref. 128, PCGEMS, 1987)
Water Solubility at 25° C: miscible (Ref. 130, Perry and Green, 1984)
Log K_{oc}: 1.5 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 1.17×10^{-7} atm m^3 $mole^{-1}$ (Ref. 75, Hine and Mookerjee, 1975)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 1,068,834,000 lbs of acrylic acid were produced at 4 different U.S. facilities (Ref. 159, U.S. ITC, 1989). Acrylic acid has the following uses: surface coatings—25 percent; polyacrylic acid and salts (including superabsorbent polymers, detergents, water treatment and dispersants)—20 percent; textiles and nonwovens—13 percent; exports—12 percent; adhesives and sealants—9 percent; leather and polishes—4 percent; paper coating—3 percent; miscellaneous acid and ester uses (including specialty acrylates)—6 percent (Ref. 29, CMR, 1986).

B. *Evidence for exposure—Human exposure.* The National Occupational Exposure Survey (NOES) indicates that 56,512 workers (14,643 female) are potentially exposed to acrylic acid; 82 percent of this exposure is from the use of trade name products containing this compound (Ref. 120, NIOSH, 1990). Potential exposure to acrylic acid was associated with 22 different industrial classifications. OSHA's Permissible Exposure Limit (PEL) of 10 ppm 8-hour Time Weighted Average (TWA) and a skin notation are based on irritation by analogy to acetic acid (54 FR 2614-2621, January 19, 1989). OSHA concluded that these were necessary to protect workers from nasal and eye irritation, but NIOSH believed the limit should be lower based on recent studies demonstrating nasal mucosa degeneration, pulmonary function changes and skin absorption (54 FR 2621).

Environmental exposure. In a survey of 172 product/process effluents at 40 different petrochemical manufacturing sites, 26 percent of the samples contained acrylic acid at concentrations greater than 0.5 ppm (Ref. 165, Wise and Fahrenthold, 1981). According to the TRI, 832,056 lbs of acrylic acid were released to the atmosphere in 1987, while 16,126 and 6,153 lbs were released to water and land, respectively (Ref. 153, TRI, 1990). For 1988, TRI indicates that

798,567 lbs were released to air, 15,950 lbs were released to land, and 16,396 lbs were released to water (Ref. 153, TRI, 1990).

I. Chemical Fate Information

In the atmosphere, acrylic acid is expected to undergo rapid oxidation with gas phase hydroxyl radicals and ozone (Ref. 8, Atkinson, 1987; Ref. 9, Atkinson and Carter, 1984). In water, acrylic acid is not expected to significantly volatilize to the atmosphere, nor is it expected to adsorb to sediment or suspended organic matter (Ref. 100, Lyman et al., 1982). Limited screening studies suggest that acrylic acid will biodegrade under aerobic conditions (Ref. 19, BIOLOG, 1990; Ref. 127, Pahren and Bloodgood, 1961). Avialable persistence data are probably inadequate to predict the biodegradation rate of acrylic acid in the environment, because the data were not generated using test systems that simulated *in situ* biodegradation. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of acrylic acid and because there are potentially substantial environmental releases.

II. Health Effects Information

Acrylic acid was rapidly absorbed, metabolized and excreted following oral or inhalation exposure (Ref. 88, Kutzman et al., 1982).

Effects identified in a 3–month drinking water study in groups of 15 male and 15 female Fischer F–344 rats given drinking water that provided doses of 83, 250 or 750 mg acrylic acid per kg per day included decreased food and water intake, reduced body weights, and alterations in organ weights (Ref. 39, DePass et al., 1983). Reduced weight gain, lethargy and nasal irritation were observed in the high dose in groups of 4–8 Alderley Park rats of both sexes exposed by inhalation to 80 or 300 ppm acrylic acid, 6 hours per day, 5 days per week for 4 weeks (Ref. 57, Gage, 1970). More recent inhalation studies in groups of 5 male and 5 female rats and mice exposed to 25 to 223 ppm acrylic acid, 6 hours per day, 5 days per week for 2 weeks (Ref. 112, Miller et al., 1979) and in groups of 15 male and female F–344 rats and B6C3F1 mice exposed to 5 to 75 ppm acrylic acid, 6 hours per day, 5 days per week for 13 weeks (Ref. 113, Miller et al., 1979; Ref. 114, Miller et al., 1981) identified mice as more sensitive than rats to the effects of inhalation exposure (nasal irritation and degeneration of the olfactory epithelium).

The fetuses of Sprague-Dawley rats given 2 4, 4.8 or 8.0 mg per kg intraperitoneal injections of acrylic acid on days 5, 10 and 15 of gestation had a dose-related decrease in body weights and an increase in the incidence of gross and skeletal malformations (Ref. 140, Singh et al., 1972). There is probably insufficient information on the effects of treatment to characterize the developmental toxicity of acrylic acid.

Maternal effects (nasal irritation and reduced rate of body weight gain) but no fetal effects were observed in the 2 highest dose groups of Sprague-Dawley rats exposed to 40, 120 or 360 ppm acrylic acid by inhalation on gestation days 6 to 15 (Ref. 87, Klimisch and Hellwig, 1989). Decreased fertility in females, decreased numbers of live pups per litter, decreased offspring body weight, and a decreased percentage of pups weaned were observed in a one-generation reproduction study in groups of 10 male and 20 female rats that were provided acrylic acid in the drinking water at doses of 83, 250 or 750 mg per kg per day (Ref. 39, DePass et al., 1983). A 2–generation study may be necessary to characterize the reproductive effects of acrylic acid.

Acrylic acid was negative in the reverse mutation test in *Salmonella* (Ref. 97, Lijinsky and Andrews, 1980; Ref. 13, BASF, 1989), did inhibit incorporation of thymidine into DNA and uracil into RNA in *S. aureus* and *E. coli* (Ref. 60, Glombitza and Heysen, 1971) and was positive for mutagenicity and clastogenicity in L5178Y mouse lymphoma cells (Ref. 115, Moore et al., 1988). Acrylic acid was positive for chromosomal aberrations in an *in vitro* test in Chinese hamster ovary cells (Ref. 106, Microbiological Associates, 1986), but did not induce chromosomal aberrations in the bone marrow cells of rats treated by gavage for up to 5 days (Ref. 107, Microbiological Associates, 1986). *In vivo* testing may be necessary to characterize the mutagenicity of acrylic acid.

Acrylic acid was negative in 1 skin painting study in 40 male C3H/Hej mice treated with 1 percent acrylic acid in acetone thrice weekly for life (Ref. 40, DePass et al., 1984), but was weakly positive as a complete carcinogen and as a promoter in a study in which 30 female ICR/HA mice were treated with 4 mg acrylic acid in acetone thrice weekly for 1.5 years (Ref. 32, Cote et al., 1986). IARC (Ref. 79, IARC, 1987) assigned acrylic acid to Group 3; not classifiable as to its carcinogenicity to humans. The National Cancer Institute (NCI) reviewed a draft chronic study conducted by the Basic Acrylic Monomer Manufacturers Association and supports the EPA nomination and Committee recommendation for inhalation oncogenicity testing. Available data are probably insufficient to characterize the oncogenic potential of acrylic acid because they were not developed using an appropriate route of administration.

The Committee recognizes that NIOSH has Health Hazard Evaluations, Hazard Evaluation and Technical Assistance reports and walk-through survey reports for acrylics that are available from NTIS and the Committee is placing a list of these documents in the public docket. A table containing a list of FYI studies submitted to EPA is also contained in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for acrylic acid.

III. Ecological Effects Information

The Committee recognizes that acute LC_{50} values are available for fresh water fish, that growth of blue-green and green algae is inhibited at 0.15 and 18 mg/L acrylic acid, respectively and that protozoan growth is inhibited at acrylic acid concentrations ranging from 0.9 to 20 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

Acetophenone

Physical and Chemical Information

CAS Number: 98–86–2
Synonyms and Trade Names: Phenylmethylketone, hypnone, acetylbenzene
Empirical Formula: C_8H_8O
Molecular Weight: 120.2
Physical State at 25° C: Liquid
Description of Chemical: Colorless liquid with sweet, pungent, odor and taste (Ref. 136, Sax and Lewis, 1987)
Melting Point: 19.6° C (Ref. 134 , Riddick et al., 1986)
Boiling Point: 202° C (Ref. 134, Riddick et al., 1986)
Vapor Pressure: 0.397 mm Hg @ 25° C (Ref. 163, Weber et al., 1981)
Specific Gravity: 1.033 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 1.58 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 6,130 mg/L (Ref. 69, Hasset et al., 1980)
Log Koc: 1.65 (Ref. 69, Hasset et al., 1980)
Henry's Constant: 1.09×10^{-5} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* Acetophenone is produced in substantial volumes; actual production volumes are CBI. Acetophenone is used

in fragrances and flavorings, and as a solvent, chemical intermediate for pharmaceuticals and resins, polymerization catalyst, and as a photoinitiator (Ref. 27, Chemcyclopedia, 1989; Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey indicates that 39,880 workers (17,664 female) were potentially exposed to acetophenone in 18 different industrial applications (Ref. 120, NIOSH, 1990). Of these workers, 97 percent were potentially exposed during the use of trade name products containing acetophenone. Acetophenone has been detected in U.S. drinking water supplies. In a survey of 10 U.S. cities between 1969 and 1972, acetophenone was found in Philadelphia's drinking water, on 7 different occasions, at a concentration of approximately 1.0 μg/L (Ref. 84, Keith et al., 1976; Ref. 149, Suffet et al., 1980). Acetophenone was also detected in drinking water samples of Britain during 1977–79 (Ref. 53, Fielding et al., 1981).

Environmental exposure. Acetophenone was detected in 131 samples obtained from 28 industries and POTWs at a maximum concentration of 16 ppm (Ref. 138, Shackelford et al., 1983). Of 204 sites monitored in 14 heavily industrialized river basins in the U.S., acetophenone was detected in 3 of them at a concentration of 1 to 3 ppb (Ref. 51, Ewing et al., 1977). The STORET database indicates that acetophenone has been found in 1 surface water sample monitored during the 1980's (Ref. 148, STORET, 1990). Acetophenone was detected in both surface and deep water samples from the Baltic Sea, 1979–80, and thought to arise from the photooxidation of fuel oil components, suggesting that acetophenone is likely to be present in water polluted by fossil fuels (Ref. 46, Ehrhardt et al., 1982; Ref. 45, Ehrhardt, 1987). In a compilation of air monitoring data collected between 1970 and 1987, the median concentration of acetophenone in urban and source dominated sites was 0.041 and 0.094 ppb, respectively (Ref. 139, Shah and Heyerdahl, 1988).

I. Chemical Fate Information

In the atmosphere, acetophenone is expected to slowly degrade by the gas phase oxidation with photochemically produced hydroxy radicals (Ref. 8, Atkinson, 1987). Its fate in water will depend on photolytic degradation (Ref. 44, Draper and Crosby, 1983; Ref. 90, Lande et al., 1976), volatilization to the atmosphere (Ref. 102, Mackay et al., 1982), and biodegradation (Ref. 18, BIODEG, 1990; Ref. 99, Ludzack and Ettinger, 1963). The available data indicate that acetophenone will not significantly adsorb to soil (Ref. 157, U.S. EPA, 1987). The Committee is not recommending chemical fate testing at this time.

II. Health Effects Information

Available pharmacokinetic data were limited to *in vitro* (Ref. 55, Fraser et al., 1967; Ref. 92, Leibman, 1971; Ref. 90, Lande et al., 1976) and *in vivo* (Ref. 151, Thierfelder and Daiber, 1923; Ref. 152, Thierfelder and Klenk, 1924; Ref. 141, Smith et al., 1954; Ref. 85, Kiese and Lenk, 1974) metabolism studies using rabbits, rats, humans and dogs. Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of acetophenone.

Subchronic studies failed to identify adverse effects in groups of 5 male and 5 female albino rats fed diets containing acetophenone at levels of 0.003, 0.05, 0.125 or 0.2 percent for 30 days (Ref. 142, Smyth, 1946) or in groups of 10 male and 10 female Osborne-Mendel rats fed diets containing 1,000, 2,500 or 10,000 ppm acetophenone for 17 weeks (Ref. 66, Hagan et al., 1967). An inhalation study reported a specific pattern of degeneration of the olfactory bulb in groups of 4 Wistar rats continuously exposed to acetophenone vapors for 1 week to 3 months (Ref. 132, Pinching and Doving, 1974). Other parameters of toxicity were not evaluated in this study. Although respiratory irritation was indicated in a number of studies, there are probably insufficient data to characterize the subchronic inhalation toxicity of acetophenone.

Reproductive toxicity data were limited to a study that reported no effects on length of gestation or postnatal development in the offspring of rats exposed dermally at 0.48 mg/kg on days 10 to 15 of gestation (Ref. 89, Lagno and Bakhtizina, 1969). A 2-generation study may be necessary to characterize the reproductive effects of acetophenone.

Acetophenone was negative for mutagenicity in 3 strains of *Salmonella* (Ref. 47, Elliger et al., 1984). Additional testing in non-bacterial systems may be necessary to characaterize the mutagenicity of acetophenone.

Anger and Johnson (Ref. 3, 1985) suggested that acetophenone could be neurotoxic. Data were not located regarding the oncogenicity of acetophenone.

The Committee recognizes that NIOSH has a Hazard Evaluations and Technical Assistance report for acetophenone that is available from NTIS and the Committee is placing the reference for this report in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for acetophenone.

III. Ecological Effects Information

The Committee recognizes that acetophenone is acutely toxic to fathead minnows; the LC_{50} values ranged from 155 to 162 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

Phenol

Physical and Chemical Information

CAS Number: 108–95–2
Synonyms and Trade Names: Carbolic acid, hydroxybenzene, phenylic acid, benzophenol.
Empirical Formula: C_6H_6O
Molecular Weight: 94.1
Physical State at 25° C: Solid
Description of Chemical: Colorless, acicular crystals or white, crystalline mass (Ref. 164, Windholz et al., 1983)
Melting Point: 43° C (Ref. 70, Hawley, 1981)
Boiling Point: 182° C (Ref. 70, Hawley, 1981)
Vapor Pressure: 0.35 mm Hg @ 25° C (Ref. 81, Jones, 1960)
Specific Gravity: 1.071 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 1.46 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 93,000 mg/L (Ref. 23, Callahan et al., 1979)
Log K_{oc}: 1.20 (Ref. 22, Boyd, 1982)
Henry's Constant: 3.33×10^{-7} atm m^3 $mole^{-1}$ (Ref. 56, Gaffney et al., 1987)
pK_a: 9.994 (Ref. 137, Serjeant and Dempsey, 1979)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 7 U.S. facilities produced 3,561,734,000 pounds of phenol (Ref. 159, U.S. ITC, 1989) and 13 facilities were listed as manufacturing this compound in 1989 (Ref. 145, SRI, 1989). Phenol has the following uses: phenolic resins—38 percent; synthesis of bisphenol A—23 percent; synthesis of caprolactam—17 percent; synthesis of alkylphenols—4 percent; synthesis of aniline—3 percent; miscellaneous uses—5 percent; exports—6 percent (Ref. 30, CMR, 1987). The miscellaneous uses of phenol include the synthesis of adipic acid, salicylic acid, phenolphthalein, pentachlorophenol, acetophetidine, picric acid, and pharmaceuticals, as a selective solvent for refining lubricating

oils, germicidal paints, laboratory reagent, dyes and indicators, slimicide, biocide, and as a general disinfectant (Ref. 136, Sax and Lewis, 1987). Many products containing phenol are utilized by consumers. The Committee is concerned with the potential for exposure to phenol because of its very high production volume, potential for release, and presence in commercial and consumer products.

B. *Evidence for exposure—Human exposure.* Phenol is used in a variety of commercial applications, many of which can lead to worker exposure. The NOES conducted during 1981–1983 by NIOSH estimated that 341,516 workers (108,851 female) were potentially exposed to phenol in 35 different industrial categories (Ref. 120, NIOSH, 1990). In a compilation of air monitoring data collected between 1970 and 1987, the mean concentration of phenol in suburban and urban areas was reported as 0.015 and 6.883 ppb, respectively (Ref. 139, Shah and Heyerdahl, 1988). The concentration of phenol in the air of Portland, OR, during 7 rain events in 1984 was 56 to 105 ppt, while the concentration of phenol in the rain ranged from 75 to 1,200 ppt (Ref. 93, Leuenberger et al., 1985). From 1977 to 1979, phenol was detected in 36 percent of drinking water supplies in England, which were drawn from groundwater, river water, and reservoirs (Ref. 53, Fielding et al., 1981). It has also been detected in U.S. drinking water supplies (Ref. 49, EPA, 1980; Ref. 119, Nicola et al., 1987). Phenol is used in numerous consumer products indicating a potential for exposure to the general population.

Environmental exposure. Phenol was detected in 738 samples obtained from 33 industries and publicly owned treatment works (POTWs) at a maximum concentration range of 7.5 ppb to 530 ppm (Ref. 138, Shackelford et al., 1983). Data from the STORET database indicates that phenol was found in 42.1 percent of industrial effluent samples obtained from 1980–83, at a median concentration of 10 ppb (Ref. 146, Staples et al., 1985). The STORET database also indicates that phenol was found in 13 percent of ambient surface water samples, and 9 percent of sediment samples (Ref. 146, Staples et al., 1985), and also in groundwater samples (Ref. 148, STORET, 1990). Phenol was detected in 4 percent of 86 samples obtained during the National Urban Runoff Program of 1982, at concentrations ranging from 3 to 10 ppb (Ref. 31, Cole et al., 1984). According to the TRI for 1987, 8,100,731 lbs of phenol were released to the air, 402,579 pounds were released to water, and 1,098,624 lbs were released to land (Ref. 153, TRI, 1990). For 1988, TRI indicates that 10,155,101 lbs were released to air, 262,127 lbs were released to water, and 2,162,250 lbs were released to land (Ref. 153, TRI, 1990).

I. Chemical Fate Information

In the atmosphere, phenol will undergo rapid oxidation during the daytime by the reaction with photochemically produced hydroxyl radicals and at night with nitrate radicals (Ref. 8, Atkinson, 1987). Phenol is not expected to significantly volatilize from water to the atmosphere; however, it is likely to undergo rapid biodegradation under both aerobic and anaerobic conditions (Ref. 18, BIODEG, 1990). Biodegradation of phenol is well documented in the literature; it is often the benchmark for determining the rate of biodegradation of other organic compounds. Phenol may also undergo oxidation by alkoxy radicals in sunlit waters containing humic materials (Ref. 108, Mill and Mabey, 1984). Phenol is unlikely to adsorb to soil (Ref. 78, Howard et al., 1989), although in soils with substantial metal or clay content, phenol may be strongly adsorbed in a pH dependent process (Ref. 7, Artiola-Fortuny and Fuller, 1982). The Committee is not recommending chemical fate testing at this time.

II. Health Effects Information

Phenol was readily absorbed through the gastrointestinal tract, lungs, and skin (Ref. 37, Deichmann and Keplinger, 1981) and was widely distributed in rats and rabbits (Ref. 35, Deichmann, 1944; Ref. 95, Liao and Oehme, 1981). At lethal oral doses (0.5 g/kg in rabbits), it was eliminated by oxidation to CO_2 and urinary excretion as free or conjugated phenol (Ref. 37, Deichmann and Keplinger, 1981). At low (0.01 to 50 mg/kg) doses in several species treated by oral, intravenous or intramuscular administration, elimination was largely by urinary excretion of free and conjugated phenol; the proportion of free and conjugated phenol varied with species (Ref. 37, Deichmann and Keplinger, 1981; Ref. 24, Capel et al., 1972; Ref. 104, Mehta et al., 1978; Ref. 111, Miller et al., 1976; Ref. 82, Kao et al., 1979). Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of phenol.

Subchronic exposure of 17 humans to drinking water containing phenol (10 to 40 mg per person per day) resulted in a burning sensation in the mouth, sores in the mouth, and diarrhea (Ref. 11, Baker et al., 1978). Groups of 10 male and 10 female F344 rats and B6C3F1 mice given phenol in drinking water at levels of 100, 300, 1,000, 3,000, or 10,000 ppm for 90 days exhibited decreased water consumption and weight gain at the high dose, but no histopathological effects (Ref. 116, NCI, 1980). Gavage treatment of rats with 50 or 100 mg/kg, 5 days per week for 6 months resulted in slight (unspecified) liver and kidney effects (Ref. 43, Dow Chemical Co., 1945). Decreased weight gain at the 2 highest doses was the only effect observed in rats given drinking water containing phenol at 800, 1200, 1,600, 2,000 or 14,000 ppm for 12 months (Ref. 36, Deichmann and Oesper, 1940). In a 2-year study, groups of 50 male and female B6C3F1 mice and F344 rats given drinking water containing 2,500 or 5,000 ppm phenol exhibited reduced water consumption and body weight gain but no clear evidence of compound-related histopathological alteration (Ref. 116, NCI, 1980).

In subchronic inhalation studies, increased mortality and CNS signs were reported in 12 guinea pigs and histological lesions were reported in the heart, liver, and kidneys of guinea pigs and 6 rabbits exposed to 100 to 200 mg/m^3 phenol for 7 hours per day, 5 days per week for 6 to 13 weeks; effects were not observed in 25 rats similarly exposed for 11 weeks (Ref. 35, Deichmann et al., 1944). Slightly reduced body weight gain, but no other evidence of toxicity, was observed in 50 rats and 10 monkeys, whereas increased stress test endurance was observed in 100 mice exposed by inhalation to 19 mg/m^3 phenol for 8 hours per day, 5 days per week for 90 days (Ref. 135, Sandage, 1961). A 15-day study associated behavioral effects with continuous inhalation exposure of rats to 100 mg/m^3 phenol (Ref. 33, Dalin and Kristoffersson, 1974). There are probably insufficient data to characterize the subchronic inhalation toxicity of phenol, because existing studies were not sufficiently comprehensive in scope to identify effects on the respiratory tract and thresholds for inhalation exposure.

Anger and Johnson (Ref. 3, 1985) suggested that phenol could be neurotoxic.

A standard developmental toxicity gavage study reported reduced fetal body weight in the high dose in groups of 20 to 22 CD rats treated with 30, 60 or 120 mg per kg per day on gestation days 6 to 15 and maternal mortality, decreased body weight and CNS effects and reduced fetal body weight and increased incidence of cleft palate at the high dose in CD mice treated with 70,

140 or 280 mg per kg per day on days 6 to 15 gestation (Ref. 121, NTP, 1983). Maternal weight loss at the highest dose, but no effects on fetuses or offspring were reported in a developmental toxicity screening test with a single 100, 333, 667 or 1,000 mg/kg gavage dose given to groups of 12 to 13 Sprague-Dawley rats on day 11 of gestation (Ref. 83, Kavlock, 1990).

A multi-generation drinking water study identified adverse effects on offspring growth and survival, but failed to adequately evaluate effects on reproductive function and postnatal survival in rats given drinking water containing 100 to 12,000 ppm phenol (Ref. 73, Heller and Pursell, 1938). A study designed to adequately evaluate effects on reproductive function and postnatal survival may be necessary to characterize the reproductive effects of phenol.

The Committee recognizes that NIOSH has a Hazard Evaluations and Technical Assistance Report, walk-through surveys, etc. for phenol that are available from NTIS and the Committee is placing a list of these documents in the public docket. A table containing a list of TSCA section 8(d) studies submitted to the EPA is also contained in the public docket for the 27th ITC Report. ATSDR published their priority toxicity data needs for phenol (55 FR 11566, March 28, 1990) and supports the EPA nomination and Committee recommendation for health effects testing. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for phenol.

III. Ecological Effects Information

The ecological effects of phenol have recently been reviewed by Walker (Ref. 160, Walker, 1988). The Committee is not recommending ecological effects testing at this time.

N,N-Dimethylaniline

Physical and Chemical Information

CAS Number: 121-69-7
Synonyms and Trade Names: Dimethylphenylamine, *N*-dimethylbenzeneamine, xylidene
Empirical Formula: $C_8H_{11}N$
Molecular Weight: 121.2
Physical State at 25° C: Liquid
Description of Chemical: Yellowish to brownish oily liquid (Ref. 136, Sax and Lewis, 1987)
Melting Point: 2.4° C (Ref. 134, Riddick et al., 1986)
Boiling Point: 194° C (Ref. 134, Riddick et al., 1986)
Vapor Pressure: 0.518 mm Hg @ 25° C (Ref. 163, Weber et al., 1981)
Specific Gravity: 0.956 (Ref. 136, Sax and Lewis, 1987)
Log Octanol/Water Partition Coefficient: 2.31 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 1,450 mg/L (Ref. 26, Chao et al., 1983)
Log K_{oc}: 1.90 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 5.68×10^{-5} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)
pK_a: 5.15 (Ref. 26, Chao et al., 1983)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1979, domestic production of *N,N*-dimethylaniline was 13.7 million pounds (Ref. 158, U.S. ITC, 1980). Information on current production volumes is CBI, but production is substantial. *N,N*-Dimethylaniline is used in dyes, as a synthetic intermediate for vanillin, pharmaceuticals, and other compounds, solvent, stabilizer, and polymerization catalyst (Ref. 91, Lawrence and Marshall, 1985; Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 28,048 workers (7395 females) were potentially exposed to *N,N*-dimethylaniline in 9 different industrial classifications (Ref. 120, NIOSH, 1990). Of these workers, 39 percent were potentially exposed during the use of trade name products containing this compound.

Environmental exposure. *N,N*-dimethylaniline was detected in 8 samples obtained from 3 industries and POTWs at a maximum concentration of 3.1 ppm (Ref. 138, Shackelford et al., 1983). According to TRI, 129,829 lbs of *N,N*-dimethylaniline were released to the air, 17,613 pounds were released to water, and 250 lbs were released to land in 1987 (Ref. 153, TRI, 1990). For 1988, TRI indicates that 98,905 lbs were released to air, 250 lbs were released to land, and 19,967 lbs were released to water (Ref. 153, TRI, 1990). *N,N*-Dimethylaniline was detected in soil samples obtained near the bank of the Buffalo River, NY, 1979 at concentrations of 10 to 40 ppm (Ref. 118, Nelson and Hites, 1980). *N,N*-Dimethylaniline was found in the Rhine River, Germany, in 1984 (Ref. 144, Sontheimer et al., 1985) and in the Wall River, Netherlands, in 1974 at a maximum concentration of 3.6 ppb (Ref. 105, Meijers and Vanderleer, 1976). *N,N*-Dimethylaniline was qualitatively detected in water from Lake Ontario, but not Lake Erie (Ref. 64, Great Lakes Water Quality Board, 1983).

I. Chemical Fate Information

N,N-dimethylaniline is expected to undergo rapid atmospheric oxidation by reaction with photochemically produced hydroxyl radicals, ozone, and with nitrate radicals at night (Ref. 8, Atkinson et al., 1987). In water, *N,N*-dimethylaniline is expected to degrade by its reaction with singlet oxygen (Ref. 65, Haag and Hoigne, 1985), and alkoxy radicals (Ref. 108, Mill et al., 1980) in sunlit waters. Biological processes are also likely to remove *N,N*-dimethylaniline from the aquatic compartment (Ref. 18, BIODEG, 1990; Ref. 117, Niemi et al., 1987), but there are uncertainties associated with its fate in wastewater treatment facilities. It is not expected to volatilize from water to the atmosphere nor is it likely to adsorb to soil (Ref. 100, Lyman et al., 1982). Available persistence data are probably inadequate to predict the activated sludge biodegradation of *N,N*-dimethylaniline, because data were not generated using test systems that simulated *in situ* wastewater treatment. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of *N,N*-dimethylaniline and because there are potentially substantial environmental releases.

II. Health Effects Information

Data related to the pharmacokinetics of *N,N*-dimethylaniline were limited to several in vitro metabolism studies with rat and rabbit microsomal enzymes (Ref. 6, Arrhenius, 1968; Ref. 72, Heinze et al., 1970; Ref. 155, Uehleke et al., 1971; Ref. 17, Bickel et al., 1971; Ref. 166, Ziegler and Gold, 1971; Ref. 42, Devereux and Fouts, 1974; Ref. 133, Rane, 1974; Ref. 76, Hlavica and Kehl, 1974; Ref. 77, Hlavica and Kehl, 1976; Ref. 16, Beije and Arrhenius, 1978; Ref. 63, Gorrod et al., 1979; Ref. 62, Gorrod and Gooderham, 1981; Ref. 124, Ohmiya and Mehendale, 1983; Ref. 125, Olsson et al., 1983; Ref. 67, Hamill and Cooper, 1984; Ref. 123, Odenbro and Arrhenius, 1984; Ref. 126, Olsson et al., 1984; Ref. 42, Devereux et al., 1985) and *in vivo* metabolism studies in rats, rabbits and dogs (Ref. 74, Hildebrandt, 1907; Ref. 48, Elson et al., 1946; Ref. 86, Kiese and Renner, 1974). Quantitative data regarding absorption, distribution, or excretion may be necessary to characterize the oral and inhalation pharmacokinetics of *N,N*-dimethylaniline.

A 13-week gavage study (that included comprehensive histopathological examination) in groups of 10 male and 10 female F344/N

rats and B6C3F1 mice treated with 31.25, 62.5, 125, 250 or 500 mg/kg for 5 days per week identified the erythrocyte and the spleen as the most sensitive target organs in both species; however, a NOAEL was not reported (Ref. 1, Abdo et al., 1984; Ref. 122, NTP, 1989). Compound-related clinical signs included lethargy in rats and mice and cyanosis in rats. The only inhalation study available was a brief abstract that reported altered muscle chronaxie and evidence of hemolytic anemia in the high dose group of rats continuously exposed for 100 days to 0.04 or 0.3 mg/m^3 (Ref. 103, Markosyan, 1969). There are probably insufficient data to characaterize the subchronic inhalation toxicity of *N,N*-dimethylaniline, because existing studies were not available in sufficient detail to identify effects on the respiratory tract and thresholds for inhalation exposure.

Anger and Johnson (Ref. 3, 1985) suggested that *N,N*-dimethylaniline could be neurotoxic.

A 2-year chronic toxicity-oncogenicity gavage study in groups of 50 male and 50 female F344/N rats treated with 3 or 30 mg/kg, 5 days per week and similarly sized groups of B6C3F1 mice treated with 15 or 30 mg/kg, 5 days per week identified the rat as more sensitive than the mouse to the noncarcinogenic effects of *N,N*-dimethylaniline on the erythrocyte and spleen (Ref. 122, NTP, 1989). This study also reported some evidence of carcinogenicity in male rats (sarcomas and osteosarcomas of the spleen) and equivocal evidence of carcinogenicity in female mice (squamous cell papillomas of the forestomach).

Mutagenicity data were limited to negative results for reverse mutation in four strains of *Salmonella* and positive results for forward mutation in mouse lymphoma L5178Y cells and for sister chromatid exchange and chromosomal aberrations in Chinese hamster ovary cells (Ref. 122, NTP, 1989). *In vivo* testing may be necessary to characterize the mutagenicityof *N,N*-dimethylaniline.

Data regarding reproductive and developmental toxicity were limited to a study in 50 CD-1 albino mice treated with *N,N*-dimethylaniline in corn oil at 365 mg per kg per day on gestation days 7 to 14; maternal mortality, but no effects on body weight or viability of the neonatal offspring were reported (Ref. 131, Piccirillo et al., 1983). A 2-generation study designed to adequately evaluate effects on body weight or viability of the neonatal offspring may be necessary to characterize the reproductive effects of *N,N*-dimethylaniline.

The Committee recognizes that OSHA has recently reconsidered the PEL for occupational exposure (54 FR 2654). The Committee recognizes that NIOSH has Health Hazard Evaluations and other reports for *N,N*-dimethylaniline that are available from NTIS and the Committee is placing a list of these documents in the public docket. The Committee recommends health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for *N,N*-dimethylaniline.

III. Ecological Effects Information

Algal toxicity data are limited to an algal bioassay (Ref. 15, Batterton et al., 1978) and a study of energy metabolism enzymes in marine algae (Ref. 5, Armstrong et al., 1981). Acute aquatic toxicity studies are available for a ciliated protozoan and several species of fish (Ref. 4, AQUIRE, 1990). The committee reviewed available algal and acute aquatic invertebrate toxicity data and believes these data are insufficient because no EC_{50} values were reported. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of *N,N*-dimethylaniline and because there are potentially substantial environmental releases.

Ethyl Acetate

Physical and Chemical Information

CAS Number: 141-78-6
Synonyms and Trade Names: Acetic ether, acetic ester, vinegar naphtha.
Empirical Formula: $C_4H_8O_2$
Molecular Weight: 88.1
Physical State at 25° C: Liquid
Description of Chemical: Clear, volatile, flammable liquid; characteristic fruity odor pleasant taste when diluted (Ref. 164, Windholz et al., 1983).
Melting Point: -83.6° C (Ref. 96, Lide, 1990)
Boiling Point: 77.1 (Ref. 96, Lide, 1990)
Vapor Pressure: 94.5 mm Hg @ 25° C (Ref. 2, Ambrose et al., 1981)
Specific Gravity: 0.898 (Ref. 164, Windholz et al., 1983)
Log Octanol/Water Partition Coefficient: 0.73 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 80,000 mg/L (Ref. 12, Banerjee, 1984)
Log K_{oc}: 0.94 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 1.38×10^{-4} atm m^3 mole^{-1} (Ref. 20, Bocek, 1976)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1988, 254.2 million pounds of ethyl acetate are produced in the United States (Ref. 159, U.S. ITC, 1989). Ethyl acetate has the following uses: coatings—41 percent; exports—36 percent; solvent—13 percent; plastics—8 percent; chemical synthesis—2 percent (Ref. 29, CMR, 1986). Many of its solvent uses include consumer products.

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 419,180 workers (99,059 female) were potentially exposed to ethyl acetate (Ref. 120, NIOSH, 1990). Of these workers, 87 percent were potentially exposed during the use of trade name products containing this compound. Potential exposure to ethyl acetate was associated with 34 different industrial classifications (Ref. 120, NIOSH, 1990). In addition, ethyl acetate is used as a solvent in numerous consumer applications. OSHA's PEL = 400 ppm 8-hour TWA; the Committee learned that Sweden may reduce their PEL to 150 ppm, but is unaware of the basis for this potential reduction.

Environmental exposure. Ethyl acetate was detected in 66 samples obtained from 17 industries and POTWs at a maximum concentration of 7.7 ppm (Ref. 138, Shackelford et al., 1983). Of 204 sites monitored in 14 heavily industrialized river basins in the U.S., ethyl acetate was detected at a concentration of 1 ppb (Ref. 51, Ewing et al., 1977). In a compilation of air monitoring data collected between 1970 and 1987, the median concentration of ethyl acetate in urban sites was 0.733 ppb (Ref. 139, Shah and Heyerdahl, 1988). Ethyl acetate was also detected in industrialized and urban sites in Virginia and West Virginia at concentrations ranging from <0.012 to 1.9 ppb (Ref. 50, Erickson and Pellizzari, 1978). The STORET database indicates that ethyl acetate has also been detected in groundwater (Ref. 148, STORET, 1990).

I. Chemical Fate Information

In the atmosphere, ethyl acetate appears to be susceptible to removal by oxidative processes (Ref. 8, Atkinson, 1987; Ref. 28 CHEMFATE, 1990). The available data indicates that ethyl acetate's fate in water will be dominated by both rapid volatilization to the atmosphere (Ref. 100, Lyman et al., 1982) and rapid biodegradation (Ref. 18, BIODEG, 1990). Biodegradation is also likely to be a significant fate process in soil (Ref. 18, BIODEG, 1990). Ethyl acetate should not significantly adsorb to soil (Ref. 100, Lyman et al., 1982). The Committee is not recommending chemical fate testing at this time.

II. Health Effects Information

Ethyl acetate was readily absorbed following oral or inhalation administration to rabbits and rats, respectively, and was rapidly hydrolysed to ethanol and acetic acid (Ref. 150, Tambo, 1973; Ref. 58, Gallaher and Loomis, 1975). In a comprehensive 90-day gavage study in groups of 30 male and 30 female Sprague-Dawley rats treated with ethyl acetate in corn oil at doses of 300, 900 or 3,600 mg per kg per day, toxic effects resulting in reduced food intake and body weight, and altered organ weights were reported in high dose males; increased salivation, breathing changes and lethargy were also observed in high-dose groups (Ref. 156, U.S. EPA, 1986). Adverse effects on body weights, blood counts and urinalysis were not reported in a study in which 3 guinea pigs were intermittently exposed by inhalation to 7,206 mg ethyl acetate vapors/m^3 for about 11 weeks (Ref. 143, Smyth and Smyth, 1928).

Data were not located regarding the developmental effects or reproductive toxicity of ethyl acetate.

Ethyl acetate was negative for induction of reverse mutation in *Salmonella* when tested with (but not without) metabolic activation (Ref. 80, Ishidate et al., 1984). Positive results were observed for mitotic aneuploidy but negative results were observed for point mutations and recombination in yeast (Ref. 167, Zimmerman et al., 1985). In mammalian test systems, a positive response was reported for chromosomal aberrations in Chinese hamster fibroblasts *in vitro* (Ref. 80, Ishidate et al., 1984) and a negative response was reported for micronucleus formation in Chinese hamsters (Ref. 14, Basler, 1986). *In vivo* gene mutation testing may be necessary to characterize the mutagenicity of *N,N*-dimethylaniline.

Ethyl acetate was not a complete carcinogen when applied dermally (0.2 mL, 45 times during 23 weeks) to 8 female CD-1 mice (Ref. 98, Lindenfelser et al., 1974). Ethyl acetate at doses of 3.6 or 18 g/kg by intraperitoneal injection 3 times per week for a total of 24 injections was negative in the Strain A mouse lung tumor assay (Ref. 147, Stoner et al., 1973). The mice were sacrificed 24 weeks after the first dose.

The Committee recognizes that NIOSH has Hazard Evaluation and Technical Assistance reports, etc. for ethyl acetate that are available from NTIS and the Committee is placing these documents in the public docket. The Committee recommends screening health effects testing and triggering oncogenicity testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for ethyl acetate.

III. Ecological Effects Information

The Committee recognizes that acute LC_{50} values are available for 14 invertebrate species, 3 species of freshwater fish, freshwater algae, a salamander, and a toad. These data indicate that ethyl acetate is acutely toxic to aquatic fauna at concentrations ranging from 9 to < 1,000 mg/L (Ref. 4, AQUIRE, 1990). The Committee is not recommending ecological effects testing at this time.

2,6-Dimethylphenol

Physical and Chemical Information

CAS Number: 576-26-1
Synonyms and Trade Names: 2,6-Xylenol
Empirical Formula: $C_8H_{10}O$
Molecular Weight: 122.2
Physical State at 25° C: Solid
Description of Chemical: White crystalline solid (Ref. 96, Lide, 1990)
Melting Point: 49° C (Ref. 96, Lide, 1990)
Boiling Point: 212° C (Ref. 96, Lide, 1990)
Vapor Pressure: 0.15 mm Hg @ 20° C (Ref. 163, Weber et al., 1981)
Log Octanol/Water Partition Coefficient: 2.36 (Ref. 68, Hansch and Leo, 1981)
Water Solubility at 25° C: 96,000 mg/L (Ref. 162, Wasik et al., 1981)
Log K_{oc}: 1.45 (Ref. 100, Lyman et al., 1982)
Henry's Constant: 7.5×10^{-7} atm m^3 $mole^{-1}$ (Ref. 100, Lyman et al., 1982)
pK_a: 10.59 (Ref. 129, Pearce and Simkins, 1968)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1977, between 2 and 20 million pounds of 2,6-dimethylphenol were produced at 6 different facilities in the United States (Ref. 154, TSCAPP, 1990). There were 2 facilities that manufactured 2,6-dimethylphenol in the U.S. in 1989 (Ref. 145, SRI, 1989). Information on current production volumes is CBI, but production is substantial. It is used primarily in the production of poly(phenylene oxide) resins (Ref. 52, Fiege, 1987). 2,6-Dimethylphenol is also used in the manufacture of tetramethylbisphenol A, 2,6-dimethylaniline, bis(4-hydroxy-2,5-dimethylphenyl)methane, dyes, pharmaceuticals and fragrances, and as a mixture with other xylenols, in disinfectants, solvents, pharmaceuticals, insecticides, fungicides, plasticizers, rubber chemicals, lubricant and gasoline additives, and wetting agents (Ref. 136, Sax and Lewis, 1987).

B. *Evidence for exposure-Human exposure.* 2,6-Dimethylphenol is used in a variety of commercial applications, many of which can lead to worker exposure. The NOES survey estimated that 1,941 workers (179 females) were potentially exposed to 2,6-dimethylphenol. Of these workers, 95 percent were potentially exposed during the use of trade name products containing this compound.

Environmental exposure. 2,6-Dimethylphenol was detected in 64 samples obtained from 33 industries and POTWs at a maximum concentration of 2,895 ppm (Ref. 138, Shackelford et al., 1983). In a compilation of air monitoring data collected between 1970 and 1987, the mean concentration of 2,6-dimethylphenol in source dominated areas was reported as 0.080 ppb (Ref. 139, Shah and Heyerdahl, 1988). The mean concentration of 2,6-dimethylphenol in the air of Portland, OR, during 7 rain events in 1984 was 2.2 ppt, while the concentration of 2,6-dimethylphenol in the rain ranged from 84 to 280 ng/L (Ref. 93, Leuenberger et al., 1985). 2,6-Dimethylphenol was detected in shale oil wastewater in the range 0.75 to 1.7 μg/L (Ref. 71, Hawthorne and Sievers, 1984) and at 12 mg/L in the wastewater from the gasification of coal (Ref. 59, Giabbi et al., 1985). It was detected in groundwater samples from a wood preserving facility in Florida at a concentration of 0.90 mg/L, while the concentration of 2,6-dimethylphenol 330 m from the site was 0.29 mg/L (Ref. 61, Goerlitz et al., 1985).

I. Chemical Fate Information

Atmospheric degradation by photochemically produced hydroxyl radicals should rapidly remove 2,6-dimethylphenol in sunlight (Ref. 10, Atkinson, 1987); degradation at night should be more rapid in urban areas through the reaction with nitrate radicals (Ref. 25, Carter, 1981). Rain washout is expected to be an effective method of atmospheric removal for 2,6-dimethylphenol (Ref. 93, Leuenberger et al, 1985). Limited data are available on the fate of 2,6-dimethylphenol in water. Volatilization from water is not expected to be a significant removal process based on the Henry's Law constant (Ref. 100, Lyman et al, 1982). In humic waters, reaction with alkyl peroxy radicals should occur (Ref. 110, Mill, 1982); however, no chemical specific data are available. Screening studies suggests that 2,6-dimethylphenol biodegrades fast under aerobic conditions after acclimation (Ref. 18, BIODEG, 1990); however, data are

limited and no studies of the degradation of 2,6-dimethylphenol in environmental samples are available. Under anaerobic conditions, one screening study indicates that 2,6-dimethylphenol is not expected to biodegrade (Ref. 18, BIODEG, 1990). Aqueous photolysis rate estimates and biodegradation data are probably inadequate to determine photolysis and biodegradation rates of 2,6-dimethylphenol in the environment, because the estimates and data were not generated using test systems that simulate *in situ* processes. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 2,6-dimethylphenol and because there are potentially substantial environmental releases.

II. Health Effects Information

In 2 reports of an 8-month rat gavage study, histopathological changes in the liver, spleen and kidneys and changes in body weight, blood pressure and levels of protein sulfhydryl groups in blood serum and internal organs were observed in 53 male rats treated with 6 mg per kg per day (Ref. 160, Veldre and Janes, 1979 and Ref. 101, Maazik, 1968). Effects were not seen in rats dosed with 0.6 mg per kg per day. Increased relative liver and spleen weights, decreased body weight gain and marked atrophy and parenchymatous dystrophy of liver cells were observed in 10 male albino rats treated by gavage with 29.5 mg per kg per day for 10 weeks (Ref. 101, Maazik, 19687).

Data on the developmental toxicity or reproductive effects of 2,6-dimethylphenol were not located.

Oncogenicity data were limited to a dermal study that identified 2,6-dimethylphenol as a weak promoter in the two-stage mouse skin assay (Ref. 21, Boutwell and Bosch, 1959). In this study, 30 female Sutter mice were treated with an initial 75 μg application of dimethylbenzanthracene followed by 25 μL of 20 percent 2,6-dimethylphenol in benzene for 15 weeks. The mice were sacrificed at 23 weeks. In a second part of this study, 25 μL of 10 percent 2,6-dimethylphenol was applied twice weekly for 20 weeks to mice that had not been initiated with dimethylbenzanthracene and the mice were maintained for an additional 8 weeks. There were "minimal effects" indicating carcinogenicity.

Mutagenicity testing of 2,6-dimethylphenol was limited to a single study in which the compound was negative with and without metabolic activation in the reverse mutation test in 4 strains of *Salmonella* (Ref. 54, Florin et al., 1980). Additional testing in non-bacterial systems may be necessary to characterize the mutagenicity of 2,6-dimethylphenol.

The Committee recommends screening health effects testing because there are potentially substantial exposures, because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 2,6-dimethylphenol.

III. Ecological Effects Information

Acute aquatic toxicity studies are available for green algae, duckweed, daphnids, sea urchins, fathead minnows and Atlantic cod, and one chronic study is available for the fathead minnow (Ref. 4, AQUIRE, 1990). Available algal toxicity data are probably insufficient because no EC_{50} values were reported. Available fish chronic toxicity data are probably insufficient because they do not provide information on the effects of 2,6-dimethylphenol to sensitive fish life stages. The Committee recommends additional ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 2,6-dimethylphenol and because there are substantially potential environmental releases.

References

(1) Abdo, K., Wolfe, M., and Hiles, R. "Subchronic toxicity of *N-N*-dimethylaniline to F344 rats and B6C3F1 mice." *Federal Proceedings*. 43(3): 1698 (1984).

(2) Ambrose, D., Ellender, J.H., Gundry, H.A., Lee, D.A., and Townsend, R. "Thermodynamic properties of organic oxygen compounds. LI. The vapour pressures of some esters and fatty acids." *Journal of Chemical Thermodynamics*. 13: 795–802 (1981).

(3) Anger, W.K. and Johnson, B.L. "Chemicals Affecting Behavior." Neurotoxicity of Industrial and Commercial Chemicals. J.L. O'Donoghue, ed. Boca Taton, FL: CRC Press (1985).

(4) AQUIRE. Aquatic Toxicity Information Retrieval Data Base. Duluth, MN: U.S. Environmental Protection Agency, Environmental Research Laboratory (1990).

(5) Armstrong, J.E., Fehler, S.W., and Calder, J.A. "Effects of petroleum hydrocarbons on the growth and energetics of marine microalgae." *Biological Monitoring of Marine Pollutants*. pp. 449–466 (1981).

(6) Arrhenius, E. "Effects on hepatic microsomal *N*- and C-oxygenation of aromatic amines by *in vivo* corticosteroid or aminofluorene treatment, diet, or stress." *Cancer Research*. 28(20): 264–273 (1968).

(7) Artiola-Fortuny, J., and Fuller, W.H. "Adsorption of some monohydrobenzene derivatives by soils." *Soil Science*. 133: 18–26 (1982).

(8) Atkinson, R. "A structure–activity relationship for the estimation of rate constants for gas-phase reactions of OH radicals with organic compounds." *International Journal of Chemical Kinetics*. 19: 799–828 (1987).

(9) Atkinson, R., and Carter, W.P.L. "Kinetics and mechanisms of gas-phase reactions of ozone with organic compounds under atmospheric conditions." *Chemical Reviews*. 84: 437–470 (1984).

(10) Atkinson, R., Tuazon, E.C., Wallington, T.J., Aschmann, S.M., Arey, J., Winer, A.M., and Pitts, J.N. Jr. "Atmospheric chemistry of aniline, N,*N*-dimethylaniline, pyridine, 1,3,5-triazine, and nitrobenzene." *Environmental Science and Technology*. 21: 64–72 (1987).

(11) Baker, E.L., Landrigan, P.J., Bertozzi, P.E., Field, P.H., Basteyns, B.J., and Skinner, H.G. "Phenol poisoning due to contaminated drinking water." *Archives of Environmental Health*. 83: 89–94 (1978).

(12) Banerjee, S. "Solubility of organic mixtures in water." *Environmental Science and Technology*. 18: 587–591 (1984).

(13) BASF. Intercompany acrylate study group-summary of toxicological research with attachments and cover letter. Submitted by BASF Corp. to U.S. EPA under TSCA Section 8(d). Microfiche No. OTS0520805. (1989).

(14) Basler, A. "Aneuploidy-inducing chemicals in yeast evaluated by the micronucleus test." *Mutation Research*. 174: 11–13 (1986).

(15) Batterton, J., Winters, K., and Van Ballen, C. "Anilines: Selective toxicity to bluegreen algae." *Science*. 199(4333): 1068–1070 (1978).

(16) Beije, B., and Arrhenius, E. "Influence of cystein deficiency on the inhibition of hepatic microsomal detoxication by methyl mercury in two rat strains." *Chemico–Biological Interactions*. 21(2–3): 167–178 (1978).

(17) Bickel, M.H., Willi, P., and Gigon, P.L. "Species and substrate differences of liver microsomal *N*-dealkylation and *N*-oxidation of tertiary amines and *N*-dealkylation of *N*-oxides." *Xenobiotica*. 1(4–5): 533–534 (1971).

(18) BIODEG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(19) BIOLOG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(20) Bocek, K. "Relationships among activity coefficients, partition coefficients and solubilities." *Experientia*, Suppl. 23: 231–240 (1976).

(21) Boutwell, R.K., and Bosch, D.K. "The tumor-promoting action of phenol and related compounds for mouse skin." *Cancer Research*. 19: 413–424 (1959).

(22) Boyd, S.A. "Adsorption of substituted phenols by soil." *Soil Science*. 134: 337–343 (1982).

(23) Callahan, M.A., Slimak, M.W., N.W. Gabel, et al. Water related environmental fate of 129 priority pollutants. Volume 2. EPA–440/479–029B. Washington, DC: U.S. EPA, Office of Water Planning and Standards, Office of Water and Waste Management. (1979).

(24) Capel, I.D., French, M.R., Milluburn, P., Smith, R.L., and Williams, R.T. "The fate of [^{14}C]phenol in various species." *Xenobiotica*. 2: 25–34 (1972).

(25) Carter, W.P.L.; Winer, A.M.; Pitts, J.N.Jr. Major Atmospheric Sink for Phenol

and the Cresols. Reaction with Nitrate Radical. Environ Sci Tech 15: 829–31. (1981).

(26) Chao, J., Lin, C.T., and Chung, T.H. "Vapor pressure of coal chemicals." *Journal of Physical and Chemical Reference Data*. 12: 10331063 (1983).

(27) Chemcyclopedia. Kuney, J.H., Ed. Volume 8. Washington, DC: American Chemical Society. pp. 43, 278 (1989).

(28) CHEMFATE. Data Base. Syracuse, NY: Syracuse Research Corporation. (1990).

(29) CMR. "Ethyl Acetate Chemical Profile." *Chemical Marketing Reporter*. March 31, 1986 (1986).

(30) CMR. "Phenol Chemical Profile." *Chemical Marketing Reporter*. September 14, 1987 (1987).

(31) Cole, R.H., Frederick, R.E., Healy, R.P., and Rolan, R.G. "Preliminary findings of the priority pollutant monitoring project of the nationwide urban runoff program." *Journal of the Water Pollution Control Federation*. 56: 898–908 (1984).

(32) Cote, I.L., Hochwalt, A.E., Seidman, I., Budzilovich, G.N., Solomon, J.J., and Segal, A. "Acrylic acid: Skin carcinogenesis in ICR/HA mice." FYI submission by Rohm and Haas Co. to U.S. EPA. Microfiche No. OTS0000367–2. (1986).

(33) Dalin, N.M., and Kristofferson, R. "Physiological effects of sublethal concentration of inhaled phenol in the rat." *Annales Zoologici Fennici*. 11: 193–199 (1974).

(34) Daubert, T.E., and Danner, R.P. Data Compilation Tables of Properties of Pure Compounds. New York, New York: American Institute of Chemical Engineers (1985).

(35) Deichmann, W.B. "Phenol studies. V. The distribution, detoxification, and excretion of phenol in the mammalian body. *Archives of Biochemistry*. 3: 345–355 (1944).

(36) Deichmann, W.B., and Oesper, P. "Ingestion of phenol. Effects on the albino rat." *Industrial Medicine*. 9: 296 (1940).

(37) Deichmann, W.B., and M.L. Keplinger. "Phenols and phenolic compounds." In: *Patty's Industrial Hygiene and Toxicology*: Clayton, G.D., and Clayton, F.E., eds. Volume 2A, 3rd revised edition. New York, NY: John Wiley Sons. pp. 2576–2584 (1981).

(38) Deichmann, W.B., Kitzmiller, K.V., and Witherup, S. "Phenol studies. VII. Chronic phenol poisoning with special reference to the effects upon experimental animals of the inhalation of phenol vapor." *American Journal of Clinical Pathology*. 14: 273–277 (1944).

(39) DePass, L.R., Woodside, M.D., Garman, R.H., and Weil, C.S. "Subchronic and reproductive toxicology studies on acrylic acid in drinking water of the rat." *Drug and Chemical Toxicology*. 6(1): 1–20 (1983).

(40) DePass, L.R., Fowler, E.H., Meckley, D.R., and Weil, C.S. "Dermal oncogenicity bioassays of acrylic acid, ethyl acrylate, and butyl acrylate." *Journal of Toxicology and Environmental Health*. 14:115–120 (1984).

(41) Devereux, T.R., and Fouts, J.R. "N-Oxidation and demethylation of N,*N*-dimethylaniline by rabbit liver and lung microsomes. Effects of age and metals." *Chemico–Biological Interactions*. 8: 91–105 (1974).

(42) Devereux, T.R., Diliberto, J.J., and Fouts, J.R. "Cytochrome P–450 monooxygenase, epoxide hydrolase and flavin monooxygenase activities in Clara cells and alveolar type II cells isolated from rabbit." *Cellular Biology and Toxicology* 1(2): 57–65 (1985).

(43) Dow Chemical Co. "The toxicity of phenol." Biochem. Research Laboratory. Unpublished Report dated 04/12/45 (1945).

(44) Draper, W.M., and Crosby, D.G. "Photochemical generation of superoxide radical anion in water." *Journal of Agricultural Food Chemistry*. 31: 734–737 (1983).

(45) Ehrhardt, M. "Photooxidation products of fossil fuel components in the water of Hamilton Harbor, Bermuda." *Marine Chemistry*. 22: 85–94 (1987).

(46) Ehrhardt, M., Bouchertall, F., and Hopf, H. "Aromatic Ketones concentrated from Baltic Sea water." *Marine Chemistry*. 11: 449461 (1982).

(47) Elliger, C.A., Henika, P.R., and MacGregor, J.T. "Mutagenicity of flavones, chromones and acetophenones in Salmonella typhimurium: New structure–activity relationships." *Mutation Research*. 135: 77–86 (1984).

(48) Elson, L.A., Goulden, F., and Warren, F.L. "The metabolism of aromatic amines." *Biochemical Journal*. 40: 29 (1946).

(49) EPA. Ambient water quality document for phenol. EPA 440/5–80–066. U.S. Environmental Protection Agency. p. C-3 (1980).

(50) Erickson, M.D., and Pellizzari, E.D. "Analysis of organic air pollutants in the Kanawha Valley, WV and the Shenandoah Valley, VA." EPA903/9–78–007 (1978).

(51) Ewing, B.B., Chian, E.S.K., Cook, J.C., Evans, C.A., Hopke, P.K., and Perkins, E.G. "Monitoring to detect previously unrecognized pollutants in surface waters." Appendix: Organic analysis data. EPA–500/6–77–015. (1977).

(52) Fiege, H. "Cresols and xylenols." In: *Ullmann's Encyclopedia of Industrial Chemistry*. 5th edition. A8: 25–59 (1987).

(53) Fielding, M., Gibson, T.M., James, H.A., McLoughlin, K., and Steel, C.P. "Organic micropollutants in drinking water." TR–159. Medmenham, England: Water Research Centre (1981).

(54) Florin, I., Rutberg, L., Curvall, M., and Enzell, C.R. "Screening of tobacco smoke constituents for mutagenicity using the Ames test." *Toxicology*. 18: 219–232 (1980).

(55) Fraser, I.M., Peters, M.A.S., and Hardinge, M.G. "Purification and some characteristics of an alpha,beta-unstaturated ketone reductase from dog erythrocytes and human liver." *Molecular Pharmacology*. 3: 233–247 (1967).

(56) Gaffney, J.S., Streit, G.E., Spall, W.D., and Hall, J.H. "Beyond acid rain – do soluble oxidants and organic toxins interact with SO_2 and NO_x to increase ecosystem effects?" *Environmental Science and Technology*. 21: 519523 (1987).

(57) Gage, J.C. "The subacute inhalation toxicity of 109 industrial chemicals." *British Journal of Industrial Medicine*. 27: 1–18 (1970).

(58) Gallaher, E.J., and Loomis, T.A. "Metabolism of ethyl acetate in the rat. Hydrolysis to ethyl alcohol *in vitro* and *in vivo*." *Toxicology and Applied Pharmacology*. 34(2): 309–313 (1975).

(59) Giabbai, M.F., Cross, W.H., Chian, E.S.K., and Dewalle, F.B. "Characterization of major and minor pollutants in waste waters from coal gassification processes." *International Journal of Environmental Analytical Chemistry*. 20: 113–129 (1985).

(60) Glombitza, K.W., and Heyser, R. "Antimicrobial components in algae. 4. Effect of acrylic acid on respiration and macromolecular synthesis on Staphylococcus aureus and Escherichia coli." *Helgolaender Wissenschaftliche Meeresuntersuchungen*. 22(3–4): 442–453 (1971).

(61) Goerlitz, D.F., Troutman, D.E., Godsy, E.M., and Franks, B.J. "Migration of wood-preserving chemicals in contaminated groundwater in a sand aquifer at Pensacola, Florida." *Environmental Science and Technology*. 19(10): 955–961 (1985).

(62) Gorrod, J.W., and Gooderham, N.J. "The *in vitro* metabolism of N,*N*-dimethylaniniline by guinea pig and rabbit tissue preparations." *European Journal of Drug Metabolism and Pharmacokinetics*. 6(3): 195–206 (1981).

(63) Gorrod, J.W., Temple, D.J., and Beckett, A.H. "The *N*- and alpha-C-oxidation of N,*N*-dialkylanilines by rabbit liver microsomes *in vitro*." *Xenobiotica*. 9(1): 17–25 (1979).

(64) Great Lakes Water Quality Board. "An inventory of chemical substances identified in the Great Lakes ecosystem." Report to the Great Lakes Water Quality Board, Windsor Ontario, Canada. 1: 16 (1983).

(65) Haag, W.R., and Hoigne, J. "Degradation of compounds in water by singlet oxygen." In: *Water Chlorination: Proceedings of the Conference on Chemical Environmental Impact and Health Effects*. Jolley, R.L.L., ed. pp. 1011–1020 (1985).

(66) Hagan, E.C., Hansen, W.H., Fitzhugh, O.G., et al. "Food flavourings and compounds of related structure. II. Subacute and chronic toxicity." *Food and Cosmetics Toxicology*. 5(2): 141–157 (1967).

(67) Hamill, S., and Cooper, D.Y. "The role of cytochrome P–450 in the dual pathways of Ndemethylation of N,*N*-dimethylaniline by hepatic microsomes." Zenobiotica. 14(1–2): 139–149 (1984).

(68) Hansch, C., and Leo, A.J. Medchem Project. Issue Nos. 19, 26. Claremont, CA: Pomona College (1981).

(69) Hasset, R.J., Means, J.C., Banwart, W.L., and Woods, S.S. Sorption properties of sediments and energy-related pollutants. EPA–600/3–80–041. Athens, GA: U.S. EPA. p. 17 (1980).

(70) Hawley, G.G. Condensed Chemical Dictionary. 10th edition. New York, NY: Van Nostrand Reinhold Co., Inc. p. 1135 (1981).

(71) Hawthorne, S.B., and Sievers, R.E. "Emission of organic air pollutants from shale oil wastewaters." Environmental Science and Technology. 18(6): 483–490 (1984).

(72) Heinze, E., Hlavica, P., Kiese, M., and Lipowski, G. "*N*-Oxygenation of arylamines in microsomes prepared from corpora lutea of the cycle and other tissues of the pig." *Biochemical Pharmacology*. 19(3): 641–649 (1970).

(73) Heller, V.G., and Pursell, L. "Phenol-contaminated waters and their physiological action." *Journal of Pharmacol and Experimental Therapeutics*. 63: 99–107 (1938).

(74) Hildebrandt, H. "Uber das biologische verhalten von phenylalkylaminen und phenylalkylammonuimbasen." *Beitraege zur Chemischen Physiologie und Pathologie.* 9: 470–480 (1907).

(75) Hine, J., and Mookerjee, P.K. "Intrinsic hydrophilic character of organic compounds. Correlations in terms of structural contributions." *Journal of Organic Chemistry.* 40: 292–298 (1975).

(76) Hlavica, P., and Kehl, M. "Effect of carbon monoxide on the *N*-oxidation of N,Ndimethylyaniline." *Hoppe Seyler's Zeitschrift fur Physiologische Chemie.* 355(12): 1508–1514 (1974).

(77) Hlavica, P., and Kehl, M. "Comparative studies on the *N*-oxidation of aniline and N,Ndimethylaniline by rabbit liver microsomes." Zenobiotica. 6(11): 679–690 (1976).

(78) Howard, P.H. Handbook of environmental fate and exposure data for organic chemicals. Volume I. Large production and priority pollutants. Chelsea, MI: Lewis Publishers. pp. 468–476 (1989).

(79) IARC (International Agency for Research on Cancer). IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs Volumes 1 to 42. Lyon, France. Supplment 7. p. 56. (1987).

(80) Ishidate, M., Sofuni, T., and Yoshikawa, K., et al. "Primary mutagenicity screening of food additives currently used in Japan." *Food and Chemical Toxicology.* 22: 623–636 (1984).

(81) Jones, A.H. "Sublimation-pressure data for organic compounds." *Journal of Chemical Engineering Data.* 5: 196–200 (1960).

(82) Kao, J., Bridges, J.W., and Faulkner, J.K. "Metabolism of.[^{14}C]phenol by sheep, pig and rat." *Xenobiotica.* 9: 141–147 (1979).

(83) Kavlock, R.J. "Structure-activity relationships in the developmental toxicity of substituted phenols: *In vivo* effects." *Teratology.* 41: 43–59 (1990).

(84) Keith, L.H., Garrison, A.W., Allen, F.R.,, Carter, M.H., Floyd, T.L., Pope, J.D., and Thruston, A.D., Jr. "Identification of organic compounds in drinking water from thirteen U.S. cities." In: *Identification and Analysis of Organic Pollutants in Water.* Keith, L.H., ed. Ann Arbor Press. pp. 329–373 (1976).

(85) Kiese, M., and Lenk, W. "Hydroacetophenones. Urinary metabolites of ethylbenzene acetophenone in the rabbit." *Xenobiotica.* 4(6): 337–343 (1974).

(86) Kiese, M., and Renner, G. "Urinary metabolites of N,*N*-dimethylaniline produced by dogs." *Naunyn Schmiedebergs Archives of Pharmacology.* 283: 143–150 (1974).

(87) Klimisch, H.J., and Hellwig, J. "Prenatal toxicity of acrylic acid in rats. Department of Toxicology, BASF Aktiengesellschaft, Ludwigshafen/Rhine, FRG (1989).

(88) Kutzman, R.S., Meyer, G.J., and Wolf, A.P. "The biodistribution and metabolic fate of [^{14}C]acrylic acid in the rat after acute inhalation exposure or stomach intubation." *Journal of Toxicology and Environmental Health.* 10(6): 969–979 (1982).

(89) Lagno, Z.Y., and Babhitizina, G.Z. "The skin resorptive action of acetophenone." Tr. Ufim. Nausch–Issled. Inst. Gig. Prof. Sabol. *Air Pollution and Industrial Hygiene* 5: 90–94 (1969).

(90) Lande, S.S., Durkin, P.R., Christopher, D.H., Howard, P.H., and Saxena, J. "Investigation of selected potential environmental contaminants: ketonic solvents." EPA–560/2–76–003. Washington, DC: U.S. EPA, Office of Toxic Substances. (1976).

(91) Lawrence. F.R., and Marshall, W.J. "Aniline" In: *Ullmann's Encyclopedia of Industrial Chemistry.* 5th edition. Volume A2. Gerhartz, W., ed. Weinheim, Germany: VCH Publishers. pp. 309–310 (1985).

(92) Leibman, K.C. "Reduction of ketones in liver cytosol." *Xenobiotica.* 1(1): 97–104 (1971).

(93) Leuenberger, C., Ligocki, M.P., and Pankow, J.F. "Trace organic compounds in rain. 4. Identities, concentrations, and scavenging mechanisms for phenols in urban air and rain." *Environmental Science and Technology.* 19: 10531058 (1985).

(94) Lewis, E.J.C., and Frieden, E. "Biochemistry of amphibian metamorphosis: Effect of triiodothyronine, thyroxin, and dinitrophenol on the respiration of the tadpole." *Endocrinology.* 65: 273–282 (1959).

(95) Liao, T.F., and Oehme, F.W. "Tissue distribution and plasma protein binding of [^{14}C]phenol in rats." *Toxicology and Applied Pharmacology.* 57: 220–225 (1981).

(96) Lide, D.R. CRC Handbook of Chemistry and Physics. 71st edition. Boca Raton, FL: CRC Press. pp. 3–18, 3–27, 3–381, 3–382 (1990).

(97) Lijinsky, W., and Andrews, A.W. "Mutagenicity of vinyl compounds in Salmonella typhimurium." *Teratogenesis Carcinogenesis, and Mutagenesis.* 1(3): 259–267 (1980).

(98) Lindenfelser, L.A., Lillehoj, E.B., and Burmeister, H.R. "Aflatoxin and trichothecene toxins: Skin tumor induction and synergistic acute toxicity in white mice." *Journal of the National Cancer Institute.* 52: 113–116 (1974).

(99) Ludzack, F.J., and Ettinger, M.B. "Biodegradability of organic chemicals isolated from rivers." Purdue University Engineering Bulletin Extension Services. 115: 278–282 (1963).

(100) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw-Hill. Chapters 4, 5, 7, 15 (1982).

(101) Maazik, I.K. "Standards for dimethylphenol isomers in water bodies." Gigiena I Sanitaria. (*Hygiene and Sanitation*). 11: 2835 (1968).

(102) Mackay, D., Shiu, W.Y., Bobra, A., Billington, J., Chau, E., yuen, A., Ng, C., and Szeto, F. 1982. "Volatilization of organic pollutants from water." EPA–600/53–82–019. NTIS PB 82–230 939. Athens, GA: U.S. EPA. pp. 91–93, 125, 131, 134, and 164 (1982).

(103) Markosyan, T.M. "Comparative toxicity of monomethylaniline and dimethylaniline in chronic experimental exposure." *Chemical Abstracts.* 71: 11369u (1969).

(104) Mehta, R., Hirom, P.C., and Millburn, P. "The influence of dose on the pattern of conjugation of phenol and l–naphthol in nonhuman primates." *Xenobiotica.* 8(7): 445–452 (1978).

(105) Meijers, A.P., and Ven Der Leer, R.C. "The occurrence of organic micropollutants in the River Rhine and the River Maas in 1974." *Water Research.* 10: 597–604 (1976).

(106) Microbiological Associates. "Cytogenicity study: Chinese hamster ovary cells (CHO) *in vitro*; test article CJP–60." FYI submission by Celanese Corporation to U.S. EPA. Microfiche No. OTS0000367–4. (1986).

(107) Microbiological Associates. "Cytogenicity study: Rat bone marrow *in vivo*; test article CJP–60." FYI submission by Celanese Corporation to U.S. EPA. Microfiche No. OTS0000367–4. (1986).

(108) Mill, T., and Mabey, W. "Photochemical tranformations." In: *Environmental Exposure from Chemicals.* Volume I. Neely, W.B., and Blau, G.E., eds. Boca Raton, FL: CRC Press. pp. 175–216 (1985).

(109) Mill, T., Hendry, D.G., and Richardson, H. "Free radical oxidants in natural waters." *Science.* 207: 886–887 (1980).

(110) Mill, T. Hydrolysis and Oxidation Processes in the Environment. *Environmental and Toxicological Chemistry.* 135–41. (1982).

(111) Miller, J.J., Powell, G.M., Olavesen, A.H., and Curtis, C.G. "The toxicity of dimethoxyphenol and related compounds in the cat." *Toxicology and Applied Pharmacology.* 38: 47–57 (1976).

(112) Miller, R.R., Ayres, J.A., and Jersey, G.C. "Acrylic acid 10–day vapor inhalation study with rats and mice, final report." #79RC-1015. Toxicology and Research Laboratory, Health and Environmental Science, Dow Chemical Company, Midland, MI. (1979).

(113) Miller, R.R., Ayres, J.A., and Jersey, G.C. "Acrylic acid 90–day vapor inhalation study with rats and mice, final report." #79RC-1024. Toxicology and Research Laboratory, Health and Environmental Science, Dow Chemical Company, Midland, MI. (1979).

(114) Miller, R.R., Ayres, J.A., Jersey, G.C., and McKenna, M.J. "Inhalation toxicicty of acrylic acid." *Fundamental and Applied Toxicology.* 1(3): 271–277 (1981).

(115) Moore, M.M., Amtower, A., Doerr, C.L., Brock, K.H., and Dearfield, K.L. "Genotoxicity of acrylic acid, methyl acrylate, ethyl acrylate, methyl methacrylate, and ethyl methacrylate in L5178Y mouse lymphoma cells. *Environmental and Molecular Mutagenesis.* 11: 49–63 (1988).

(116) NCI (National Cancer Institute). Bioassasy of phenol for possible carcinogenicty in F344 rats and B6C3F1 mice. NIH Publication No. 80–1759 (1980).

(117) Niemi, G.J., Veith, G.D., Regal, R.R., and Vaishnav, D.D. "Structural features associated with degradable and persistent chemicals." *Environmental Toxicology and Chemistry.* 6: 515–527 (1987).

(118) Nelson, C.R., and Hites, R.A. "Aromatic amines in and near the Buffalo River." *Environmental Science and Technology.* 14(9): 1147–1149 (1980).

(119) Nicola, R.M., Branchflower, R., and Pierce, D. "Chemical contaminants in bottomfish." *Journal of Environmental Health.* 49(6): 342–347 (1987).

(120) NIOSH (National Institute for Occupational Safety and Health). National Occupational Exposure Survey (NOES) (1990).

(121) NTP (National Toxicology Program). Teratologic evaluation of phenol in CD rats

and mice. Prepared by Research Triangle Institute, Research Triangle Park, NC. NTIDS PB83-247726. Gov. Rep. Announce. Index. 83(25): 6247 (1983).

(122) NTP (National Toxicology Program). Toxicology and carcinogenesis studies of parachloroaniline hydrochloride in F344/N rats and B6C3F1 mice. NTP Technical Report No. 351. U.S. Department of Health and Human Services, Public Health Service, National Institute of Health, Research Triangle Park, NC. (1989)

(123) Odenbro, A., and Arrhenius, E. "Effect of triethyl lead chloride on hepatic microsomal *N*-oxygenation and C-oxygenation of N,Ndimethylaniline in rats." *Toxicology and Applied Pharmacology*. 74(3): 357–363 (1984).

(124) Ohmiya, Y., and Mehendale, H.M. "*N*-Oxidation of *N,N*-dimethylanimiline in the rabbit and rat lung." *Biochemical Pharmacology*. 32(7): 1281–1285 (1983).

(125) Olsson, U., Beije, B., Wachtmeister, C.A., and Arrhenius, E. "Effects of dimethylnitrosoamine on metabolism of *N,N*-dimethylaniline by rat liver microsomes. A comparative study of treatment *in vivo* in isolated liver perfusion and in the microsomal system." *Chemico-Biological Interactions*. 45(2): 191–201 (1983).

(126) Olsson, U., Onflet, A., and Beije, B. "Dietary selenium deficiency causes decreased Noxygenation of *N,N*-dimethylaniline and increased mutagenicity of dimethylnitrosoamine in the isolated rat liver/cell culture system." *Mutation Research*. 126(1): 73–80 (1984).

(127) Pahren, H.R., and Blaodgood, D.E. "Biological oxidation of several vinyl compounds." *Water Pollution Control Federation Journal*. 33: 233–236 (1961).

(128) PCGEMS. Graphical Exposure Modeling System (GEMS). CLOGP. U.S. EPA (1987).

(129) Pearce, P.J., and Simkins, R.J.J. "Acid strengths of some substituted picric acids." *Candian Journal of Chemistry*. 46: 241–248 (1968).

(130) Perry, R.H., and Green, D. Perry's Chemical Handbook. 6th edition. New York, NY: McGraw-Hill (1984).

(131) Piccirillo, V.J., McCall, D.L., Lunchick, C., Plankenhorn, L.J., and Sexsmith, C. Screening of priority chemicals for reproductive hazards. NTIS PB 83-2576000. p. 108 (1983).

(132) Pinching, A.J., and Doving, K.B. "Selective degeneration in the rat olfactory bulb following exposure to different odours." *Brain Research*. 82(2): 195–204 (1974).

(133) Rane, A. "*N*-Oxidation of a tertiary amine (*N,N*-dimethylaniline) by human fetal liver microsomes." *Clinical Pharmacology and Therapeutics*. 15(1): 32–36 (1974).

(134) Riddick, J.A., Bunger, W.B., and Sakano, T.K. Organic Solvents: Physical Properties and Methods of Purification. Techniques of Chemistry Series. 4th edition. New York, NY: Wiley-Interscience. 3:355–356, 640–641 (1986).

(135) Sandage, C. "Tolerance criteria for continuous inhalation exposure to toxic material." *ASD Technical Report 61–519 (I)*. Kansas City, MO: Midwest Research Institute. pp. 1–29 (1961).

(136) Sax, N.I., and Lewis, R.J. Haweley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. pp. 910, 411, 421, 896–897, 1244 (1987).

(137) Serjeant, E.P. and Dempsey, B. "Ionization constants of organic acids in aqueous solution." *IUPAC Chemical Data Series No. 23*. New York, NY: Pergamon Press. pp. 160–161 (1979).

(138) Shackelford, W.M., Cline, D.M., Fass, L., and Kurth, G. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography–mass spectrometry." *Analytica Chemica Acta*. 146: 1527 [supplemental data] (1983).

(139) Shah, J.J., and Heyerdahl, E.K. National ambinet volatile organic compounds (VOCS) database update. EPA/600–3–88–010. p. 48 (1988).

(140) Singh, A.R., Lawrence, W.H., and Autian, J. "Embryonic-fetal toxicicty and teratogenic effects of a group of methacrylate esters in rats." *Journal of Dental Research*. 51(6): 1632–1638 (1972).

(141) Smith, J.N., Smithies, R.H., and Williams, R.T. "Studies in detoxication 56. The metabolism of alkylbenzenes. Stereochemical aspects of the biological hydroxylation of ethylbenzene to methylphenylcarbinol." *Biochemical Journal*. 56: 320–324 (1954).

(142) Smyth, H.F. "Acute and sub-acute toxicity of acetophenone." Report 8–42. Mellon Institute of Ind. Res. (1946).

(143) Smyth, H.F., and Smyth, H.F., Jr. "Inhalation experiments with certain lacquer solvents." *Journal of Industrial Hygiene and Toxicology*. 10: 261–271 (1928).

(144) Sontheimer, H., Brauch, H.J., and Kuhn, W. "Impact of different types of organic micropollutants present on sources of drinking water on the quality of drinking water." *Science of the Total Environment*. 47: 27–44 (1985).

(145) SRI (SRI International). Directory of Chemical Producers. Menlo Park, CA: SRI International. pp. 844–845, 1063 (1989).

(146) Staples, C., Werner, A., and Hoogheem, T. "Assessment of priority pollutant concentrations in the United States using STORET database." *Environmental Toxicology and Chemistry*. 4: 131–142 (1985).

(147) Stoner, G.D., Shimkin, M.B., Kniazeff, A.J., Weisburger, J.H., Weisburger, E.K., and Gori, G.B. "Test for carcinogenicity of food additives and chemotherapeutic agents by the pulmenary tumor response in strain A mice." *Cancer Research*. 33: 3069–3085 (1973).

(148) STORET. STORET Data Base retrieval 3/19/90. Washington, DC: U.S. EPA. (1990).

(149) Suffet, I.H., Brenner, L., and Cairo, P.R. "Gas chromatography-mass spectrometry identification of trace organics in Philadelphia, Pennsylvania, USA drinking waters during a two year period." *Water Research*. 14: 853–867 (1980).

(150) Tambo, S. "Toxicity hazards of paint thinners with particular emphasis on the metabolism and toxicity of acetate esters." *Nichidai Igaku Zasshi*. 32(3): 348–360 (1973).

(151) Thierfelder, K., and Daiber, K. "Zur kenntnis des verhaltens fettaromatischer ketone im tierkorper." *Hoppe Seyler's Zeitschrift fuer Physiologische Chemie*. 130: 380–396 (1923).

(152) Thierfelder, K., and Klenk, E. "Zur kenntnis des verhaltens des acetophenons und benzols im tierkorper." Hoppe Seyler's Zeitschrift fuer Physiologische Chemie. 141: 2932 (1924).

(153) TRI (Toxics Release Inventory). Database retrieval 3/16/90. U.S. EPA. (1990).

(154) TSCAPP. Computer print-out of nonconfidential production data from TSCA inventory. Washington, DC: OTS, CID, U.S. EPA. Online 3/15/90 (1990).

(155) Uehleke, H., Reiner, O., and Hellmer, K.H. "Perinatal development of teriary amine Noxidation and NADPH cytochrome c reduction in rat liver microsomes." *Research Communications in Chemical Pathology and Pharmacology*. 2(8): 793805 (1971).

(156) U.S. EPA. "Rat oral subchronic study with ethyl acetate." Washington, DC: Office of Solid Waste, U.S. Environmental Protection Agency (1986).

(157) U.S. EPA. Health and Environmental Effects Document for Acetophenone. Prepared for the Environmental Criteria and Assessment Office, U.S. EPA, Cincinnati, OH. (1987).

(158) U.S. ITC (U.S. International Trade Commission). Synthetic Organic Chemicals. U.S. Production and Sales, 1979. Washington, DC: U.S. Goverment Printing Office. Publication No. 1099. p. 43 (1980).

(159) U.S. ITC (U.S. International Trade Commission). Synthetic Organic Chemicals. U.S. Production and Sales 1988. Washington, DC. U.S. Government Printing Office. Publication No. 2219. pp. 3–12, 15–4, and 15–6 (1989).

(160) Veldre, I.A., and Janes, H.J. "Toxicological studies of shale oils, some of their components and commercial products." *Environmental Health Perspectives*. 30: 141–146 (1979).

(161) Walker, J.D. "Relative sensitivity of algae, bacteria, invertebrates, and fish to phenol: Analysis of 234 tests conducted for more than 149 Species." *Toxicity Assessment: An International Journal*. 3:415–457 (1988).

(162) Wasik, S.P., Tewari, Y.B., Miller, M.M., and Matire, D.E. "Octanol/water partition coefficients and aqueous solubilities of organic compounds." NBSIR81–2406. Washington, DC: U.S. Department Comm. Natl. Bur. Std. (1981).

(163) Weber, R.C., Parker, P.A., and Bowser, M. Vapor Pressure Distribution of Selected Organic Chemicals. EPA–600/2–81–021. Cincinnati, OH: U.S. EPA. (1981).

(164) Windholz, M. Budavari, S., Blumetti, R.F., and Otterbein, E.S., The Merck Index. 10th edition. Rahway, New Jersey: Merck Co., Inc.. pp. 19, 478–479, 545, 1043 (1983).

(165) Wise, H.E., and Fahrenthold, P.D. "Occurrence and predictability of priority pollutants in wastewaters of the organic chemicals and plastics/synthetic fibers industrial categories." American Chemical Society. 181st National Meeting, Division of Industrial Chemical Symposium on Treatability of Industrial Aqueous Effluents. (1981).

(166) Ziegler, D.M., and Gold, M.S. "Oxidative metabolism of tertiary amine drugs by human and liver tissue." *Zenobiotica*. 1: 325326 (1971).

(167) Zimmermann, F.K., Mayer, V.W., Scheel, I., and Resnik, M.A. "Acetone, methyl ethyl ketone, ethyl acetate, acetonitrile and other polar aprotic solvents are stgrong inducers of aneuploidy in *Saccharomyces cerevisiae*." *Mutation Research*. 149: 339–351 (1985).

2.3 *Recommended with intent-to-designate chemicals*—2.3.a *Aldehydes.* The aldehyde group was nominated to the Committee by EPA for aquatic toxicity testing. The Committee's computerized substructure-based selection processes were used to identify individual chemicals in the aldehyde group. Two aldehydes, crotonaldehyde (CAS # 4170–30–3) and butyraldehyde (CAS # 123–72–8) were previously recommended in the 22nd and 23rd reports, respectively. Two aldehydes, isobutyraldehyde (CAS # 78–84–2) and propanal (CAS # 123–38–6) are among the 53 chemicals in the Organization for Economic Cooperation and Development's (OECD) Screening Information Data Sets (SIDS) phase one voluntary testing program. Submission of reliable data or data development through the voluntary OECD SIDS program could change the Committee's testing recommendations for these two aldehydes. Two of the recommended aldehydes, acetaldehyde (CAS 75–07–0) and propanal were listed among the chemicals in Title III of the 1990 amendments of the Clean Air Act that the Committee is continuing to review. The Committee's recommendation of aldehydes is consistent with its comprehensive approach to processing Member Agency chemical groups and identifying substructure-based chemical groups in need of testing. Other chemical-group based actions include groups such as brominated flame retardants recommended in the 25th report and alkyl phosphates and isocyanates recommended in the 26th report.

The TSCA Inventory names are used in the paragraph following Table 1. These names are used to facilitate comparison with the names in the TSCA section 8(a) and 8(d) rules that EPA will prepare for chemicals recommended in this Report. Since common names of aldehydes are used in this chapter, the CAS number is listed in parentheses following the first use of a common name to facilitate identification of chemicals listed in the paragraph following Table 1.

Summary of recommended studies. Testing recommendations for the aldehydes listed in the paragraph following Table 1 are summarized in Table 1.

Physical and Chemical Information

The physical and chemical properties of the very large volume aldehydes listed in the paragraph following Table 1 are well described in the literature. The Committee, however, was unable to identify the physical and chemicals properties of environmental and health significance for all members of this group.

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release.* The Committee believes that the aldehydes listed in the paragraph following Table 1 are commercially available, and that many are produced in substantial quantities. For example, acetaldehyde, isobutyraldehyde, and propanal have current domestic production capacities exceeding 300 million pounds (Ref. 22, SRI, 1990). Actual production volumes of the other aldehydes are CBI.

Aldehydes are used primarily as synthetic intermediates, yet aldehydes are also used in significant quantities in applications that are expected to result in both human and environmental exposure. Aldehydes are used in the production of alcohols, carboxylic acids, agricultural chemicals, pharmaceuticals, disinfectants, dyes, detergents, food additives, catalysts for crosslinking polymers, and fragrance chemicals (Ref. 5, Falbe et al., 1985; Ref. 21, Sherman, 1978). Acetaldehyde, propanal, and acrolein (CAS 107–02–8) have particular importance in commercial applications.

Many members of the aldehydes listed in the paragraph following Table 1 are used in fragrances and flavors. For example, α-pentylcinnamaldehyde (CAS 122–40–7) is a popular perfume in soaps, the C_6-C_{13} saturated alkyl aldehydes are used as fragrances and toning agents (Ref. 5, Falbe et al., 1985), and 4-methylphenylacetaldehyde (CAS 99–72–9), vanillin (CAS 121–33–5), and piperonal (CAS 120–57–0) are used in flavors (Ref. 5, Falbe et al., 1985; Ref. 19, Sax and Lewis, 1987). Piperonal is used in suntan and mosquito repellents and citronellal (CAS 106–23–0) is used in insect repellents (Ref. 19, Sax and Lewis, 1987). The Committee, therefore, is concerned with the potential for release and exposure resulting from the high production volumes and numerous uses of the various members of this group.

B. *Evidence for exposure—Human exposure.* There is an extensive data base relating aldehydes to human exposure. For example, acetaldehyde, isobutyraldehyde, propanal, furfural (CAS 98–01–1), and benzaldehyde have been found in U.S. drinking water supplies (Ref. 2, Coleman et al., 1976; Ref. 9, Keith et al., 1976; Ref. 11, Krasner et al, 1989; Ref. 10, Kool et al., 1982; Ref. 12, Lucas, 1984). Benzaldehyde, nonanal, and dodecanal have been found in breath, personal air, or tap water samples (Ref. 26, Wallace et al., 1984). Acetaldehyde, isobutyraldehyde, butyraldehyde, methylbutyraldehyde (CAS 590–86–3), valeraldehyde (CAS 110–62–3), furfural, heptanal, benzaldehyde, octanal, decanal, undecanal, and dodecanal have been identified in samples of human mothers' milk (Ref. 18, Pellizzari et al., 1982).

The NOES conducted during 1981–83 by NIOSH reported that 14,054 workers were potentially exposed to acetaldehyde; 28 to trichloroacetaldehyde (CAS 75–87–6); 4113 to isobutyraldehyde; 22,173 to 4-(1,1-dimethylethyl)-α-methyl-benzenepropanal (CAS 80–54–6); 2,187 to 1,3,3-trimethyl-2-(formylmethylene)indoline (CAS 84–83–3); 4,598 to salicylaldehyde (CAS 90–02–8); 34 to 2,5-dimethoxybenzaldehyde (CAS 93-02-7); 1,557 to α-methylbenzeneacetaldehyde (93–53–8); 134,158 to furfural; 17,271 to 4-(dimethylamino)benzaldehyde (CAS 100–10–7); 30,517 to benzaldehyde; 23,972 to 2-(phenylmethylene)-octanal (CAS 101–86–0); 44,721 to α-methyl-4-(1-methylethyl)benzenepropanal (CAS 103–95–7); 62,450 to 3-phenyl-2-propenal (CAS 104–55–2); 12,494 to *p*-tolualdehyde (CAS 104–87–0); 6,573 to *p*-chlorobenzaldehyde (CAS 104–88–1); 2,162 to citronellal; 1,300 to acrolein; 42,978 to ethanedial; 10,938 to 7-hydroxy-3,7-dimethyloctanal (CAS 107–75–5); 1,863 to 2-methylundecanal (CAS 110–41–8); 1,557 to pentanal; 350,626 to pentanedial; 21,760 to heptanal; 20,732 to decanal; 1,557 to undecanal; 1,650 to 10-undecenal; 7,056 to dodecanal; 72 to veratraldehyde (CAS 120–14–9); 1,450 to 4-(diethylamino)benzaldehyde (CAS 120–21–8); 15,846 to piperonal; 18,034 to 3-ethoxy-4-hydroxybenzaldehyde (CAS 121–32–4); 65,750 to vanillin; 14,182 to 2-(phenylmethylene)heptanal (CAS 122–40–7); 868 to phenylacetaldehyde (CAS 122–78–1); 43,899 to *p*-anisaldehyde (CAS 123–11–5); 2,087 to propanal; 12,959 to octanal; 7,149 to nonanal; 3,433 to hexahydrodibenzofurancarboxaldehyde (CAS 126–15–5); 5,331 to 2-nitrobenzaldehyde (CAS 552–89–6); 1,557 to α-pentylcinnamaldehyde; and 28 to methylbenzaldehyde (CAS 1334–78–7) (Ref. 17, NIOSH, 1989).

Environmental Exposure. According to the TRI, 9,466,569 pounds of acetaldehyde were released to the environment in 1988 (Ref. 24, TRI, 1990). Corresponding releases for other

members of the aldehydes group listed in TRI are as follows: propanal: 1,048,296 pounds; isobutyraldehyde: 791,996 pounds and acrolein: 103,068 pounds (Ref. 24, TRI, 1990). A compilation of published and unpublished data on the atmospheric concentration of volatile organic compounds determined between 1970 to 1987 found that acetaldehyde, benzaldehyde, 2-propenal, propanal, and methylbenzaldehyde have been detected in remote, rural, suburban, urban, source dominated, indoor, or workplace air samples (Ref. 20, Shah and Heyerdahl, 1988).

Members of the aldehyde group have been detected in various environmental samples. For example, acetaldehyde, ethanedial, acrolein, propanal, benzaldehyde, and valeraldehyde have been detected in rain and/or fog samples (Ref. 7, Grosjean and Wright, 1983; Ref. 13, Mazurek and Simoneit, 1986; Ref. 23, Steinberg and Kaplan, 1984). Isobutyraldehyde, furfural, and benzaldehyde were detected in surface water samples obtained from 204 sites in the United States near heavily industrialized areas (Ref. 4, Ewing et al., 1977). Isobutyraldehyde and propanal were listed as frequently detected organics in the U.S. National Organics Reconnaissance Survey of surface waters (Ref. 6, Fielding and Packham, 1977). Acetaldehyde, propanal, ethanedial, heptanal, octanal, nonanal, decanal, undecanal, and dodecanal have been detected in seawater samples (Ref. 8, Gschwend et al., 1982; Ref. 15, Mopper and Stahovic, 1986); although acetaldehyde, propanal, and ethanedial may arise from natural as well as industrial sources (Ref. 15, Mopper and Stahovic, 1986). Isobutyraldehyde has been detected in the Delaware River (Ref. 3, DeWalle and Chian, 1978), and benzaldehyde has been detected in samples from freshwater lakes (Ref. 14, McFall et al., 1985). Benzaldehyde and 4-(dimethylamino)benzaldehyde have been detected in soil samples taken near the Buffalo River (Ref. 16; Nelson and Hites, 1980).

I. Chemical Fate Information

Chemical fate testing for the aldehydes is not recommended at this time.

II. Health Effects Information

Health effects testing for the aldehydes is not recommended at this time.

III. Ecological Effects Information

Structure-activity relationships (SAR) are frequently used to predict the toxic potential of untested chemicals when assessing their potential for adverse ecological effects (Ref. 1, Auer et al. 1990). The Committee previously used SAR to identify the toxic potential of 2,6-di-*tert*-butylphenol in the 17th report. SARs used as part of the Committee's computerized, substructure-based chemical selection processes suggested that aldehydes could be toxic to birds, fish and mammals (Ref. 25, Walker and Brink, 1989). SARs have suggested that aldehydes could have excess toxicity (Ref. 1, Auer et al. 1990). Chemicals that could have excess toxicity are those that could be more toxic than would be predicted for neutral organics based on a narcotic mode of action. The Committee is concerned that SARs for aldehydes are only available to predict acute toxicity to fish. The Committee recommends ecological effects testing because there are potentially substantial environmental releases and because there are insufficient data to reasonably determine or predict the ecological effects of aldehydes that are submitted to the EPA as new chemicals.

References

(1) Auer, C.M., Nabholz, J.V., and Baetcke, K.P. "Mode of action and the assessment of chemical hazards in the presence of limited data: Use of structure-activity relationships (SAR) under TSCA, Section 5." *Environmental Health Perspectives* 87:183–197 (1990).

(2) Coleman, W.E., Lingg, R.D., Melton, R.G. and Kopfler, F.C. "The occurrence of volatile organics in five drinking water supplies using gas chromatography/mass spectrometry." In: *Analysis and Identification of Organic Compounds in Water.* L. Keith, Ed. Ann Arbor Science, Ann Arbor, MI. 305–327 (1976).

(3) DeWalle, F.B. and Chian, E.S.K. "Presence of trace organics in the Delaware River and their discharge by municipal and industrial sources." *Proceedings of the Industrial Waste Conference.* 32:908–919 (1978).

(4) Ewing, B.B., Chian, E.S.K., Cook, J.C., Evans, C.A., Hopke, P.K. and Perkins, E.G. "Monitoring to detect previously unrecognized pollutants in surface waters." U.S. Environmental Protection Agency, Washington, D.C. EPA–560/677–015 (1977).

(5) Falbe, J., Henkel, K.G., Dusseldorf, P.L. and Weber, Jurgen. "Aldehydes, aliphatic and araliphatic." In: *Ullmann's Encyclopedia of Industrial Chemistry,* 5th Edition. W. Gerhartz, Y.S. Yamamoto, Eds. VCH Publishers, Deerfield Beach, FL. A1:321–352 (1985).

(6) Fielding, M. and Packham, R.F. "Organic compounds in drinking water and public health." *Journal of Institutional Water and Engineering Science.* 31:353–375 (1977).

(7) Grosjean, D. and Wright, B. "Carbonyls in urban fog, ice fog, cloudwater and rainwater." *Atmospheric Environment.* 17:2093–2096 (1983).

(8) Gschwend, P.M., Zafiriou, O.C., Mantoura, R.F.C., Schwarzenbach, R.P. and Gagosian, R.B. "Volatile organic compounds at a coastal site. 1. Seasonal variations." *Environmental Science and Technology.* 16:31–38 (1982).

(9) Keith, L.H., Garrison, A.W., Allen, F.R., Carter, M.H., Floyd, T. L., Pope, J.D. and Thruston, A.D. "Identification of organic compounds in drinking water from thirteen U.S. cities." In: *Identification and Analysis of Organic Pollutants in Water.* L.H. Keith, Ed. Ann Arbor Press, Ann Arbor, MI. 329–373 (1976).

(10) Kool, H.J., Van Kreijl, C.F. and Zoetman, B.C.J. "Toxicology assessment of organic compounds in drinking water." *Critical Reviews in Environmental Control.* 12:307–357 (1982).

(11) Krasner, S.W., McGuire, M.J., Jacangelo, J.G., Patania, N.L., Reagan, K.M. and Aieta, E.M. "The occurrence of disinfection byproducts in U.S. drinking water." *Journal of the American Water Works Association.* 81:41–53 (1989).

(12) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." Health Effects Research Lab, Columbus, OH. EPA–600/184–020A. 1:133–162 (1984).

(13) Mazurek, M.A. and Simoneit, B.R.T. "Organic components in bulk and wet-only precipitation." *CRC Critical Reviews of Environmental Control.* CRC Press, Inc. Boca Rotan, FL. (1986).

(14) McFall, J.A., Antoine, S.R. and Deleon, I.R. "Organics in the water column of Lake Pontchartrain." *Chemosphere.* 14:1253–1265 (1985).

(15) Mopper,K and Stahovic, W.L. "Sources and sinks of low molecular weight organic carbonyl compounds in seawater." *Marine Chemistry.* 19:305–323 (1986).

(16) Nelson, C.R. and Hites, R.A. "Aromatic amines in and near the Buffalo River." *Environmental Science and Technology.* 14:11471149 (1980).

(17) NIOSH. Department of National Industrial and Occupational Safety and Health, National Occupational Exposure Survey (NOES). (1989).

(18) Pellizzari, E.D., Hartwell, T.D., Harris, B.S.H., Waddell, R.D., Whitaker, D.A. and Erickson, M.D. "Purgeable organic compounds in mother's milk." *Bulletin of Environmental Contamination and Toxicology.* 28:322–328 (1982).

(19) Sax N.I. and Lewis R.J.S.R. "Hawley's Condensed Chemical Dictionary, 11th ed." Van Nostrand Reinhold Co., New York, NY. pp. 922 and 1217 (1987).

(20) Shah, J.J. and Heyerdahl, E.K. "National ambient volatile organic compounds (VOCs) database update". U.S. Environmental Protection Agency, Washington, DC. EPA/600/388/010. pp. 44–73 (1988).

(21) Sherman, P.D. "Butyraldehyde." In: *Kirk-Othmer Encyclopedia of Chemical Technology,* Third Edition. John Wiley and Sons, New York, NY. 4:790–798 (1978).

(22) SRI International. "Directory of Chemical Producers." SRI International, Menlo Park, CA. (1990).

(23) Steinberg, S. and Kaplan, I.R. "The determination of low molecular weight aldehydes in rain, fog, and mist by reversed phase liquid chromatography of the 2,4-

dinitrophenylhydrazone derivatives." *International Journal of Environmental Analytical Chemistry.* 18:723–726 (1984).

(24) TRI. Computer printout of the Toxics Release Inventory. (1990).

(25) Walker, J.D., and Brink, R.H. "New cost-effective, computerized approaches to selecting chemicals for priority testing consideration." Aquatic Toxicology and Environmental Fate. G.W. Suter II and M.A. Lewis, eds. American Society for Testing and Materials, Philadelphia, PA. ASTM STP 1007. 11:507–536 (1989).

(26) Wallace, L.A., Pellizzari, E., Hartwell, T., Rosenzweig, M., Erickson, M., Sparacino, C. and Zelon, H. "Personal exposure to volatile organic compounds. I. Direct measurements in breathing-zone air, drinking water, food, and exhaled breath." *Environmental Research.* 35:293–319 (1984).

2.4 *Recommended chemicals*—2.4.a *IRIS Chemicals—Summary of recommended studies.* Recommended studies are summarized in Table 1.

2,4-Dinitrophenol

Physical and Chemical Information

CAS Number: 51–28–5

Synonyms and Trade Names: 1-hydroxy-2,4-dinitrobenzene (or 2,4-DNP)

Empirical Formula: $C_6H_4N_2O_5$

Molecular Weight: 184

Physical State at 25° C: Solid

Description of Chemical: Light yellow crystals (Ref. 62, Windholz et al., 1983

Melting Point: 113° C (Ref. 62, Windholz et al., 1983)

Boiling Point: Sublimes (Ref. 34, Lide, 1990)

Vapor Pressure: 5.1×10^{-3} mm Hg @ 20° C (Ref. 47, Schwarzenbach et al., 1988)

Specific Gravity: 1.683 (Ref. 34, Lide, 1990)

Log Octanol/Water Partition Coefficient: 1.54 (Ref. 25, Hansch and Leo, 1981)

Water Solubility at 20° C: 2,787 mg/L (Ref. 47, Schwarzenbach et al., 1988)

Log K_{oc}: 1.75 (Ref. 36, Lyman et al., 1982)

Henry's Constant: 4.43×10^{-7} atm m^3 $mole^{-1}$ (Ref. 36, Lyman et al., 1982)

pK_a: 4.09 (Ref. 23, Gordon and Ford, 1972)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* The production volume of 2,4-dinitrophenol is CBI, but current production is substantial. 2,4-Dinitrophenol is used in the synthesis of dyes, picric acid, picaramic acid, wood preservatives, diaminophenol dihydrochloride (a photographic developer), explosives, insecticides, and as a pH indicator (Ref. 46, Sax and Lewis, 1987; Ref. 62, Windholz et al., 1983). 2,4-Dinitrophenol may also be formed in the atmosphere by the reaction of nitrate radicals with phenol or other aromatic compounds.

B. *Evidence for exposure—Human exposure.* Few data were located. ATSDR believes that 2,4-dinitrophenol may have been present in eight superfund sites. Eckel et al. (Ref. 16, 1986) reported an average concentration of 1,312 + 2,519 ppm 2,4-dinitrophenol for four hazardous waste dumpsite samples. The substantial production volume and uses in a variety of applications suggest significant occupational exposure potential.

Environmental exposure. 2,4-Dinitrophenol was detected in 21 samples obtained from 8 industries and POTWs at a maximum concentration of 10.2 ppm (Ref. 49, Shackelford et al., 1983). The STORET database indicates that 2,4-dinitrophenol was found in 2 percent of industrial effluent samples monitored between 1980 and 1983, and 0.4 percent of the ambient water samples (Ref. 52, Staples et al., 1985). According to TRI, the total release of 2,4-dinitrophenol to the air in 1987 was 32,600 lbs, while 86,500 lbs and 750 lbs were released to water and land, respectively (Ref. 55, TRI, 1990). For 1988, TRI indicates that 20,085 lbs were released to air, 98,692 lbs were released to water, and 257 lbs were released to land (Ref. 55, TRI, 1990).

I. Chemical Fate Information

2,4-Dinitrophenol is expected to rapidly degrade in the atmosphere through oxidative reactions with photochemically produced hydroxyl radicals and through the night-time reaction with nitrate radicals (Ref. 3, Atkinson 1987, Ref. 4, Atkinson et al., 1984, Ref. 5, Atkinson et al., 1987). Limited data are available on the fate of 2,4-dinitrophenol in water. Based on the Henry's Law constant, volatilization is not expected to be a significant process (Ref. 36, Lyman et al., 1982). Screening studies suggest that 2,4-dinitrophenol degrades fast under aerobic conditions after acclimation (Ref. 7, BIODEG 1990); however, data are limited. Under anaerobic conditions in flooded soils, loss is rapid and appears to be via reduction to the corresponding amine (Ref. 7, BIODEG, 1990; Ref. 29, Khoping and Wiegel, 1987). It is not clear, however, whether biodegradation or abiotic degradation is occurring or whether degradation proceeds beyond loss of the parent compound. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 2,4-dinitrophenol and because there are potentially substantial environmental releases.

II. Health Effects Information

Pharmacokinetic studies for 2,4-dinitrophenol included an intraperitoneal study in rabbits and ducklings that indicated that uptake from the peritoneal cavity was very rapid (peak serum levels were obtained in rabbits within 5 minutes of treatment) (Ref. 20, Gehring and Buerge, 1969). Pharmacokinetic studies also included *in vitro* (Ref. 42, Parker, 1952; Ref. 17, Eiseman et al., 1974) and *in vivo* (Ref. 43, Perkins, 1919; Ref. 61, Williams, 1959; Ref. 48, Senczuk et al., 1971) metabolism studies that indicated that reduction and conjugation are the major biotransformation pathways.

A review of the therapeutic use of 2,4-dinitrophenol to correct obesity in humans reported over 100 cases of cataract formation at the lower range of the recommended therapeutic dose, 2 mg per kg per day (Ref. 26, Horner, 1942). The study did not identify a NOAEL for this effect. A 6–month study in male rats fed diets containing 0.01, 0.02, 0.05 or 0.2 percent 2,4-dinitrophenol identified a threshold for weight loss in rats, but cataracts were not reported even at doses sufficient to cause severe emaciation or death (Ref. 51, Spencer et al., 1948).

Data regarding reproductive and developmental effects were limited. Female rats treated by gavage twice daily with 20 mg/kg, from 8 days before mating through lactation, delivered more stillborn per litter and more litters with higher neonatal mortality than controls (Ref. 63, Wulff et al., 1935). Pregnant mice treated by gavage (25.5 or 38.3 mg/kg) or intraperitoneal injection (7.7 or 13.6 mg/kg) during a portion of gestation were hyperexcitable and hyperthermic; embryotoxicity (not specified) was also observed (Ref. 21, Gibson, 1973).

2,4-Dinitrophenol induced mutations in *E. coli* (Ref. 15, Demerec et al., 1951) but not in *Salmonella* (Ref. 14, Deflora, 1981) and produced chromatid breaks in bone marrow cells of mice treated by intraperitoneal injection. Oncogenicity data were limited to dermal studies in which 2,4-dinitrophenol was not a complete carcinogen (Ref. 51, Spencer et al., 1948) or a tumor promoter (Ref. 8, Boutwell and Bosch, 1959; Ref. 53, Stenback and Garcia, 1975).

NIOSH supported the EPA nomination and recommended dermal absorption testing. The Committee recommends health effects testing because there are insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 2,4-dinitrophenol.

III. Ecological Effects Information

The toxicity of 2,4-dinitrophenol has been tested in five species of algae (Ref. 27, Huang and Gloyna, 1967; Ref. 13, Dedonder and Van Sumere, 1971; Ref. 57, U.S. EPA, 1978; Ref. 10, Bringmann and Kuhn, 1978; Ref. 2, AQUIRE, 1990)

and in duckweed (Ref. 50, Simon and Blackman, 1953; Ref. 2, AQUIRE, 1990). Acute toxicity has been tested in invertebrates (Ref. 6, Bernstein, 1955; Ref. 30, Kojima, 1960; Ref. 31, Kopperman et al., 1974; Ref. 9, Bringmann and Kuhn, 1977; Ref. 57, U.S. EPA, 1978; Ref. 2, AQUIRE, 1990), fish (Ref. 44, Phipps et al., n.d.; Ref. 64, Zitko et al., 1976; Ref. 57, U.S. EPA, 1978; Ref. 2, AQUIRE, 1990) and bullfrogs (Ref. 33, Lewis and Frieden, 1959). An acute oral toxicity test in birds has been reported (Ref. 45, RTECS, 1990). The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 2,4-dinitrophenol and because there are potentially substantial environmental releases.

3,4-Dimethylphenol

Physical and Chemical Information

CAS Number: 95-65-8
Synonyms and Trade Names: 3,4-Xylenol
Empirical Formula: $C_8H_{10}O$
Molecular Weight: 122.2
Physical State at 25° C: Solid
Description of Chemical: White crystalline solid (Ref. 34, Lide, 1990)
Melting Point: 67° C (Ref. 34, Lide, 1990)
Boiling Point: 225 (Ref. 34, Lide, 1990)
Vapor Pressure: 0.075 mm Hg @ 20° C (Ref. 60, Weber et al., 1981)
Specific Gravity: 0.9830 (Ref. 34, Lide, 1990)
Log Octanol/Water Partition Coefficient: 2.23 (Ref. 25, Hansch and Leo, 1981)
Water Solubility at 25° C: 50,000 mg/L (Ref. 18, Fiege and Bayer, 1987)
Log K_{oc}: 1.06 (Ref. 36, Lyman et al., 1982)
Henry's Constant: 7.56×10^{-7} atm m^3 $mole^{-1}$ (Ref. 36, Lyman et al., 1982)
pK_a: 8.42 (Ref. 39, Miller and Faust, 1973)

Rationale for Recommendations

A. *Exposure Information—Production/use/disposal/exposure/release.* In 1977, between .21 to 2.1 million pounds of 3,4-dimethylphenol were produced in the United States (Ref. 56, TSCAPP, 1990). Information on current production volumes is CBI, but production is substantial. 3,4-Dimethylphenol, as a mixture with other xylenols, is used in disinfectants, solvents, pharmaceuticals, insecticides and fungicides, plasticizers, rubber chemicals, additives to lubricants and gasoline, and dyestuffs (Ref. 46, Sax and Lewis, 1987).

B. *Evidence for exposure—Human exposure.* The NOES survey estimated that 93 workers (56 females) were potentially exposed to trade name products containing 3,4-dimethylphenol (Ref. 41, NIOSH, 1990). 3,4-Dimethylphenol has been qualitatively identified in the drinking water supplies of Cincinnati, OH (Ref. 35, Lucas, 1984). The mean concentration of 3,4-dimethylphenol in the air of Portland, OR during 7 rain events in 1984 was 2.2 ppt, while the concentration of 3,4-dimethylphenol in the rain ranged from 54 to 190 ng/L (Ref. 32, Leuenberger et al., 1985). It was detected in groundwater samples from a wood preserving facility in Florida at a concentration of 2.4 mg/L, while the concentration of 3,4-dimethylphenol 330 m from the site was 0.85 mg/L (Ref. 22, Goerlitz et al., 1985). 3,4-Dimethylphenol also was detected in underground wells near a coal gasification site (Ref. 54, Stuermer et al., 1982).

Environmental exposure. 3,4-Dimethylphenol was detected in 10 samples obtained from 8 industries and POTWs at a maximum concentration of 3 ppm (Ref. 49, Shackelford et al., 1983). The concentration of 3,4-dimethylphenol in the raw effluent from a paper mill was 0.0457 mg/L (Ref. 28, Keith, 1976). It was detected in Los Angeles county effluent during 1980-81 at a concentration of 20 μg/L (Ref. 24, Gossett et al., 1983). 3,4-Dimethylphenol was also found in refinery effluent in Australia at 0.02 mg/L (Ref. 11, Cardwell et al., 1986). 3,4-Dimethylphenol was qualitatively detected in samples taken from the Saint Lawrence River (Ref. 59, Visser et al., 1977). It was also identified in the leachate of a sanitary landfill in Barcelona, Spain (Ref. 1, Albaiges et al., 1986).

I. Chemical Fate Information

Atmospheric degradation by photochemically produced hydroxyl radicals should be a rapid removal process for 3,4-dimethylphenol in sunlight (Ref. 3, Atkinson, 1987); degradation at night should be more rapid in urban areas through the reaction with nitrate radicals (Ref. 12, Carter, 1981). Also, rain washout is expected to be an effective method of atmospheric removal for 3,4-dimethylphenol (Ref. 32, Leuenberger et al., 1985). Limited data are available on the fate of 3,4-dimethylphenol in water. Volatilization from water is not expected to be a significant removal process based on the Henry's Law constant (Ref. 36, Lyman et al, 1982). In humic waters, reaction with alkyl peroxy radicals should occur (Ref. 38, Mill, 1982); however, no chemical specific data are available. Screening studies suggests that 3,4-dimethylphenol biodegrades fast under aerobic conditions without acclimation (Ref. 7, BIODEG, 1990); however, data are somewhat limited and no studies of the degradation of 3,4-dimethylphenol in environmental water samples are available. One grab sample study at high concentration (500 ppm) in soil suggests that 3,4-dimethylphenol biodegrades in soil; however, the data do not adequately predict the biodegradation of 3,4-dimethylphenol at low concentrations. Under anaerobic conditions, one screening study indicates that 3,4-dimethylphenol is not expected to biodegrade (Ref. 7, BIODEG, 1990). The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of 3,4-dimethylphenol and because there are potentially substantial environmental releases.

II. Health Effects Information

Data related to the pharmacokinetics of 3,4-dimethylphenol were limited to a single study in male Wistar rats that reported recovery of 93.5 percent of the radioactivity in the urine within 24 hours of giving a single oral 35 mg/kg dose (Ref. 40, Miyamoto et al., 1969).

In two reports of an 8-month rat gavage study, histopathological changes in the liver, spleen and kidneys and changes in body weight and blood pressure were observed in 53 male rats treated with 1.4 or 14 mg per kg per day (Ref. 58, Veldre and Janes, 1979 and Ref. 37, Maazik, 1968). Increased relative liver and spleen weights, decreased body weight gain and marked atrophy and parenchymatous dystrophy of liver cells were observed in 10 male albino rats treated by gavage with 72.5 mg per kg per day for 10 weeks (Ref. 37, Maazik, 1968).

Data on the developmental toxicity or reproductive effects of 3,4-dimethylphenol were not located. Oncogenicity data were limited to a dermal study that identified 3,4-dimethylphenol as a complete carcinogen and a tumor promoter in a mouse skin assay (Ref. 8, Boutwell and Bosch, 1959). In the promotion study groups of 30 female Sutter mice were treated with an initial application of 75 μg dimethylbenzanthracene followed by 25 μL of 20 percent 3,4-dimethylphenol in benzene twice weekly for 15 weeks. The mice were sacrificed at 23 weeks. In the complete carcinogen study 25 μL of 10 percent 3,4-dimethylphenol was applied twice weekly for 20 weeks and the mice were sacrificed at 28 weeks. Mutagenicity testing of 3,4-dimethylphenol was limited to a single study in which the compound was negative with and without metabolic activation in the reverse mutation test in 4 strains of *Salmonella* (Ref. 19, Florin et al., 1980).

The Committee recommends health effects testing because there are

insufficient data to reasonably determine or predict health effects and because these data are needed to reduce the uncertainty associated with risk assessments for 3,4-dimethylphenol.

III. Ecological Effects Information

Some acute aquatic toxicity data are available for green algae, sea urchins, sand shrimp and fathead minnows (Ref. 2, AQUIRE, 1990). No algal EC_{50} data were available. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of 3,4-dimethylphenol.

References

(1) Albaiges, J., Casado, F., and Ventura, P. "Organic indicators of groundwater pollution by a sanitary landfill." *Water Resources.* 20(9): 1153–1159 (1986).

(2) AQUIRE. Aquatic Toxicity Information Retrieval Data Base. Duluth, MN: U.S. Environmental Protection Agency, Environmental Research Laboratory (1990).

(3) Atkinson, R. "A structure-activity relationship for the estimation of rate constants for gas-phase reactions of OH radicals with organic compounds." *International Journal of Chemical Kinetics.* 19: 799–828 (1987).

(4) Atkinson, R.A., Carter, W.P.L., Plum, C.N., Winer, A.M., and Pitts, J.N., Jr. "Kinetics of the gas-phase reactions of NO^3 radicals with a series of aromatics at 296 ± 2K." *International Journal of Chemical Kinetics.* 16: 887–898 (1984).

(5) Atkinson, R., Aschmann, S.M., and Winer, A.M. "Kinetics of the reactions of NO3 radicals with a series of aromatic compounds." *Environmental Science and Technology.* 21: 11231126 (1987).

(6) Bernstein, G.S. "Effect of 2,4dinitrophenol on sea urchin sperm." *Proceedings of the Society for Experimental Biology and Medicine* 09: 28 (1955).

(7) BIODEG. (Database). Syracuse, NY: Syracuse Research Corporation (1990).

(8) Boutwell, R.K., and Bosch, D.K. "The tumor-promoting action of phenol and related compounds for mouse skin." *Cancer Research.* 19: 413–424 (1959).

(9) Bringmann, G., and Kuhn, R. "Limiting values for the damaging action of water pollutants or bacteria (Pseudomonas putida) and green algae (Scenedesmus quadricauda) in the cell multiplication inhibition test." *Zeitschrift fuer Wasser und Abwasser Forschung.* 10: 87–98 (1977).

(10) Bringmann, G., and Kuhn, R. "Testing of substances for their toxicicty threshold: Model organisms Microcystis (Diplocytis) and Scenedesmus quadricauda." *Mitteilungen - Internationale Vereiningung fuer Theoretische und Angewandte Limnologie.* 21: 275 (1978).

(11) Cardwell, T.J., et al. "Determination of alkyl phenols in refinery effluents by liquid chromatography using electrochemical detection." *International Journal of Environmental Analytical Chemistry.* 24: 23–36 (1986).

(12) Carter, W.P.L.; Winer, A.M.; Pitts, J.N.Jr. Major Atmospheric Sink for Phenol and the Cresols. Reaction with Nitrate Radical. *Environmental Science Technology* 15: 829–31. (1981).

(13) Dedonder, A., and Van Sumere, C.F. "The Effect of phenolics and related compounds on the growth and the respiration of *Chlorella vulgaris*" *Zeutschrift fuer Pflanzenphysiologie.* 65(1): 7080 (1971).

(14) DeFlora, S. "Study of 106 organic and inorganic compounds in the *Salmonella*/ microsome test." *Carcinogenesis* (London). 2(4): 283–298 (1981).

(15) Demerec, M., Bertani, G., and Flint, J. "A survey of chemicals for mutagenic action on *E. coli.*" *American Naturalist.* 85: 119 (1951).

(16) Eckel, W.P., Trees, D.P., and Kovell, S.P. "Distribution and concentration of Proceedings, National Conference on Hazardous Wastes and Environmental Emergencies, Superfund, Hazardous Materials Control Research Institute, Silver Spring, MD. pp. 250–257 (1986).

(17) Eiseman, J.L., et al. "Kinetics of *in vitro* nitro reduction of 2,4-dinitrophenol by rat liver homogenates." *Toxicology and Applied Pharmacology.* 27: 140 (1974).

(18) Fiege, H. "Cresols and xylenols." In: *Ullmann's Encyclopedia of Industrial Chemistry.* 5th edition. A8: 25–59 (1987).

(19) Florin, I., Rutberg, L., Curvall, M., and Enzell, C.R. "Screening of tobacco smoke constituents for mutagenicity using the Ames test." *Toxicology.* 18: 219–232 (1980).

(20) Gehring, P.J., and Buerge, J.F. "The distribution of 2,4–dinitrophenol relative to its cataractogenic activity in ducklings and rabbits." *Toxicology and Applied Pharmacology.* 15: 574–592 (1969).

(21) Gibson, J.E. "Teratology studies in mice with 2-sec-butyl-4,6-dinitrophenol (dinoseb)." *Food and Cosmetics Toxicology.* 11: 31 (1973).

(22) Goerlitz, D.F., Troutman, D.E., Godsy, E.M., and Franks, B.J. "Migration of wood-preserving chemicals in contaminated groundwater in a sand aquifer at Pensacola, Florida." *Environmental Science and Technology.* 19(10): 955–961 (1985).

(23) Gordon, A.J., and Ford, R.A. The Chemists Companion. New York, NY: John Wiley and Sons. p. 61 (1972).

(24) Gossett, R.W., Brown, D.A., and Young, D.R. "Predicting the bioaccumulation of organic compounds in marine organisms using octanol/water partition coefficients." *Marine Pollution Bulletin.* 14(10): 387–392 (1983).

(25) Hansch, C., and Leo, A.J. Medchem Project. Issue Nos. 19, 26. Claremont, CA: Pomona College (1981).

(26) Horner, W.D. "Dinitrophenol and its relation to formation of cataract." *Archives of Ophthalmology.* 27: 1097 (1942).

(27) Huang, J., and Gloyna, E. "Effects of toxic organics on photosynthetic reoxygenation." Environmental Health Engineering Research Lab. PB 216–749. (1967).

(28) Keith, L.H. "Identification of organic compounds in unbleached treated kraft paper mill wastewaters." *Environmental Science and Technology.* 10: 555–564 (1976).

(29) Khoping, G.W., and Wigel, J. "Influence of temperature on the anaerobic degradation of substituted phenols in freshwater lake sediments." *American Society for Microbiology, Abstracts of 87th Annual Meeting,* Atlanta, GA. (1987).

(30) Kojima, H.K. "The effect of DNP and NaN_3 on fertilized eggs of the sea urchin with special reference to the induction of the abnormal cleavage." *Embryologia.* 5: 71 (1960).

(31) Kopperman, H.L., et al. "Aqueous chlorination and ozonation studies. I. Structuretoxicicty correlations of phenolic compounds to Daphnia magna." *Chemico-Biological Interactions.* 9: 245 (1974).

(32) Leuenberger, C., Ligocki, M.P., and Pankow, J.F. "Trace organic compounds in rain. 4. Identities, concentraions, and scavenging mechanisms for phenols in urban air and rain." *Environmental Science and Technology.* 19: 10531058 (1985).

(33) Lewis, E.J.C., and Frieden, E. "Biochemistry of amphibian metamorphosis: Effect of triiodothyronine, thyroxin, and dinitrophenol on the respiration of the tadpole." *Endocrinology.* 65: 273 (1959).

(34) Lide, D.R. CRC Handbook of Chemistry and Physics. 71st edition. Boca Raton, FL: CRC Press. pp. 3–18, 3–27, 3–381, 3–382 (1990).

(35) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." EPA600/1–84–020C. Columbus, OH: Columbus Health Effects Research Labs. 3:50–54 (1984).

(36) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw–Hill. Chapters 4, 7, 15 (1982).

(37) Maazik, I.K. "Standards for dimethylphenol isomers in water bodies." Gigiena I Sanitaria. (*Hygiene and Sanitation*). 11: 2835 (1968).

(38) Mill, T. Hydrolysis and oxidation processes in the environment. Environmental and Toxicological Chemistry 1: 135–41. (1982).

(39) Miller, R.W., and Faust, S.D. "Sorption from aqueous solution by Organo-Clay. III. The effect of pH on sorption of various phenols." *Environmental Letters.* 4: 211–223 (1973).

(40) Miyamoto, J., Yamamoto, K., and Matsumoto, T. "Metabolism of 3,4-dimethylphenyl-*N*-methylcarbamate in white rats." *Agricultural and Biological Chemistry.* 33(7): 1060–1073 (1969).

(41) NIOSH (National Institute for Occupational Safety and Health). National Occupational Exposure Survey (NOES) (1990).

(42) Parker. V.H. "Enzymic reduction of 2,4–dinitrophenol by rat–tissue homogenates." *Biochemical Journal.* 51: 363 (1952).

(43) Perkins, R.G. "A study of the munitions intoxications in France." *Pubic Health Reports.* 34: 2335 (1919).

(44) Phipps, G.L., et al. "The acute toxicity of phenol and substituted phenols to the fathead minnow." (manuscript) (n.d.).

(45) RTECS. Online database. (1990).

(46) Sax, N., and Lewis, R.J. Haweley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. pp. 910, 411, 421, 896–897, 1244 (1987).

(47) Schwarzenbach, R.P., et al. "Compound properties relevant for assessing

the environmental partitioning of nitrophenols." *Environmental Science and Technology.* 22: 83–92 (1988).

(48) Senczuk, W., et al. "Excretion of 2,4dinitrophenol and 2–amino–4–nitrophenol." *Bromatologia i Chemia Toksykologiczna.* 4: 453460 (1971).

(49) Shackelford, W.M., Cline, D.M., Fass, L., and Kurth, G. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography–mass spectrometry." *Analytica Chemica Acta.* 146: 1527 [supplemental data] (1983).

(50) Simon, E.W., and Blackman, G.E. "Studies in the principles of phytotoxicity. IV. The efffects of the degree of nitration on the toxicicty of phenol and other substituted benzenes." *Journal of Experimental Botany.* 4: 235 (1953).

(51) Spencer, H.C., Rowe, V.K, Adams, E.M., and Irish, D.D. "Toxicological studies on laboratory animals of certain alkyl dinitrophenols used in agriculture." *Journal of Industrial Hygiene and Toxicology.* 30: 10–25 (1948).

(52) Staples, C., Wener, A., and Hoogheem, T. "Assessment of priority pollutant concentrations in the United States using STORET database." *Environmental Toxicology and Chemistry.* 4: 131–142 (1985).

(53) Stenback, F., and Garcia, H. "Studies on the modifying effect of dimethyl sulfoxide and other chemicals on experimental skin tumor induction." *Annals of the New York Academy of Sciences.* 243: 209 (1975).

(54) Stuermer, D.H., Ng, D.J., and Morris, C.J. "Organic contaminants in groundwater near an underground coal gassification site in northeastern Wyoming." *Environmental Science and Technology.* 16(9): 582–587 (1982).

(55) TRI (Toxics Release Inventory). Database retrieval 3/16/90. U.S. EPA. (1990).

(56) TSCAPP. Computer print–out of nonconfidential production data from TSCA inventory. Washington, DC: OTS, CID, U.S. EPA. Online 3/15/90 (1990).

(57) U.S. EPA . "In-depth studies on health and environmental impacts of selected water pollutants." U.S. Environmental Protection Agency. Contract No. 68–01–4646. (1978).

(58) Veldre, I.A., and Janes, H.J. "Toxicological studies of shale oils, some of their components and commercial products." *Environmental Health Perspectives.* 30: 141–146 (1979).

(59) Visser, S.A., Lamontagne, G., Zoulalian, V., and Tessier, A. "Bacteria active in the degradation of phenols in polluted waters of the St. Lawrence River." *Archives of Environmental Contamination and Toxicology.* 6(4): 455–469 (1977).

(60) Weber, R.C., Parker, P.A., and Bowser, M. Vapor Pressure Distribution of Selected Organic Chemicals. EPA–600/2–81–021. Cincinnati, OH: U.S. EPA. (1981).

(61) Williams, R.T. The metabolism and detoxication of drugs, toxic substances and other organic compounds. 2nd edition. New York, NY: John Wiley and Sons. (1959).

(62) Windholz, M. Budavari, S., Blumetti, R.F., and Otterbein, E.S., The Merck Index. 10th edition. Rahway, New Jersey: Merck Co., Inc.. pp. 19, 478–479, 545, 1043 (1983).

(63) Wulff, L.M.R., Emge, L.A., and Bravo, F. "Some effects of alpha-dinitrophenol on pregnancy in the white rat." *Proceedings of the Society for Experimental Biology and Medicine.* 32: 678 (1935).

(64) Zitko, V., et al. "Toxicity of alkyldinitrophenols to some aquatic organisms." *Bulletin of Environmental Contamination and Toxicology.* 16:508–515 (1976).

2.4.b *N*-Phenyl-1-napthylamine. *N*-phenyl-1-naphthylamine was nominated to the Committee by OSHA as an ongoing effort to identify chemicals for which Permissable Exposure Limits may be proposed.

Summary of recommended studies. Recommended studies are summarized in Table 1.

N-Phenyl-1-napthylamine

Physical and Chemical Information

CAS Number: 90–30–2
Synonyms and Trade Names: Vulkanox PAN
Empirical Formula: $C_{16}H_{13}N$
Molecular Weight: 219.29
Physical State at 25° C: Solid
Melting Point: 60–62° C (Ref. 1, Aldrich, 1988)
Boiling Point: 335° C (Ref. 16, Sax and Lewis, 1987)
Water Solubility @ 25° C: ≈10 mg/L (Ref. 4, Greenhouse, 1976)
Log Octanol/Water Partition Coefficient: 4.8 (Estimated, Ref. 11, Lyman et al., 1982)
Log Koc: 3.7 (Estimated, Ref. 11, Lyman et al., 1982)

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release. N*-Phenyl-1-naphthylamine is used as an antioxidant in rubber, silicone oils, paraffinic oils for lubrication, anti-rust oils, paint, and plastics, and in the manufacture of dyes and other organic chemicals (Ref. 9, Kirk-Othmer, 1981, Ref. 12, Meylan et al., 1976, Ref. 10, Kirk-Othmer, 1981, Ref. 8, Kirk-Othmer, 1967, Ref. 16, Sax and Lewis, 1987, Ref. 6, Jarvholm and Lavenius, 1981, Ref. 18, Sikka et al., 1981). While actual production volumes are CBI, *N*-phenyl-1-naphthylamine is produced in substantial quantities.

B. *Evidence for exposure—Human exposure.* The NOES conducted during 1981–83 by NIOSH estimated that 96,478 workers (8,274 females) were potentially exposed to *N*-phenyl-1-naphthylamine, almost exclusively through trade name products (Ref. 13, NIOSH, 1990).

Environmental exposure. N-Phenyl-1-naphthylamine has been detected (but not quantified) in the wastewater of a chemical specialty plant as well as in the river water and sediment receiving the wastewater (Ref. 7, Jungclaus et al., 1978). In a wastewater survey conducted by the Effluent Guidelines Division of EPA, over 4,000 wastewater samples from industrial facilities and publicly owned treatment works were surveyed (Ref. 17, Shackelford et al., 1983). This survey found *N*-phenyl-1-naphthylamine in one sample from the non-ferrous metals industry at a concentration of 8.46 ppb.

I. Chemical Fate Information

N-phenyl-1-naphthylamine has been tested for biodegradation in a number of screening studies as well as in soil and freshwater grab samples (Ref. 15, Rosenberg, 1983, Ref. 18, Sikka et al., 1981). In screening studies using sewage sludge as the inoculum and *N*-phenyl-1-naphthylamine at 2 mg/L, the time to 50 percent disappearance was approximately 4.2 days. Autoclaved sewage showed less than 20 percent removal after 18 days. In lake water dosed with 2 mg/L *N*-phenyl-1-naphthylamine, no degradation was observed in the first 5 days, but approximately 50 percent disappearance was observed after 10 days. No further degradation was seen at day 18. In soil exposed to *N*-phenyl-1-naphthylamine at 1.54 mg/kg, 17 percent of *N*-phenyl-1-naphthylamine was mineralized to CO_2 after 11 days. Sterile samples of water and soil showed almost no degradation. When exposed to sunlight, distilled water solutions of *N*-phenyl-1-naphthylamine had a half-life of 5.7 days. The Committee recommends chemical fate testing because there are insufficient data to reasonably determine or predict the persistence of *N*-phenyl-1-naphthylamine.

II. Health Effects Information

Pharmacokinetics studies in rats indicate that *N*-phenyl-1-naphthylamine is rapidly absorbed and distributed widely following gavage administration (Ref. 18, Sikka et al., 1981). The urine and the feces are the primary routes of excretion with 35 and 60 percent, respectively, of the dose eliminated by each route after 72 hours. *In vitro* metabolism with rat liver microsomes produced the mono- and dihydroxy derivatives as well as other metabolites (Ref. 18, Sikka et al., 1981).

Negative results have been reported in a reverse mutation assay in bacteria, a forward mutation assay in cultured mammalian cells, a dominant lethal assay in rodents, and unscheduled DNA synthesis in cultured cells (Ref. 2, Brusick and Matheson, 1977). NTP also reported negative results in bacterial reverse mutation assays and in a chromosomal aberration assay in cultured mammalian cells, but reported positive results in a sister chromatid

exchange assay in cultured cells (Ref. 14, NTP, 1990).

In an oncogenicity study, groups of 23 to 25 male mice were administered purified *N*-phenyl-1-naphthylamine by subcutaneous injection 3 times per week for 9 weeks (Ref. 19, Wang et al., 1984). The mice were observed after the administration of *N*-phenyl-1-naphthylamine; after the 10th month of observation a statistically significant higher incidence of total malignant tumors, lung carcinomas, and hemangiosarcomas was recorded. Technical grade *N*-phenyl-1-naphthylamine produced similar effects. Although the tumor incidence was increased, the response was not clearly dose related. In a second experiment, using a different strain of mice, unilateral nephrectomy appeared to enhance the development of renal hemangiosarcomas. In a study with insufficient detail to allow for the evaluation of the data, dogs that were orally administered *N*-phenyl-1-naphthylamine for 3.5 years had no observed increase in the incidence of bladder tumors (Ref. 3, Du Pont, 1945).

In Sweden, a cohort of 20 men and 78 women who were exposed to *N*-phenyl-1-naphthylamine in an anti-rust oil used for packing bearings were studied (Ref. 6, Jarvholm and Lavenius, 1981). The oil contained 50 percent white spirits, 16.5 percent each of mineral oil, lanolin, and zinc naphthenate, and 0.5 percent *N*-phenyl-1-naphthylamine, while the paper used as packing material for the bearings contained sodium nitrite. The authors note the potential for forming the nitrosamine of *N*-phenyl-1-naphthylamine. The workers were exposed any time between 1954 to 1957 and followed until 1976. When compared to national gender- and age-specific cancer rates, there was an increased rate of morbidity and mortality from cancer in women. There was no site specific increase in incidence of cancer, with tumors of the colon, breast, uterus, ovary, bladder, brain, and thyroid reported, along with a reticulosarcoma. This study provides inconclusive evidence that *N*-phenyl-1-naphthylamine is carcinogenic in humans, because of the small group size, the lack of increase in site-specific cancers, and confounders from exposure to multiple chemicals.

The Committee recommends health effects testing because there are insufficient data to reasonably determine or predict the health effects of *N*-phenyl-1-naphthylamine and because there are potentially substantial human exposures.

III. Ecological Effects Information

A 48-hour EC_{50} of 2.1 mg/L was reported for larval *Xenopus laevis* (South African clawed toad) (Ref. 5, Greenhouse, 1977). Concentrations of ≧ 5 mg/L caused 100 percent mortality in larval *Rana pipiens* (Leopard frog) after 48-hour's exposure (Ref. 4, Greenhouse, 1976). *N*-Phenyl-1-naphthylamine caused teratogenic effects in both *Xenopus laevis* and *Rana pipiens* (Ref. 5, Greenhouse, 1977, Ref. 4, Greenhouse, 1976). A 48-hour and 21-day static-renewal test in *Daphnia* yielded LC_{50} values of 0.68 mg/L and 0.06 mg/L, respectively (Ref. 18, Sikka et al., 1981). The no observed effect concentration was 0.13–0.36 and 0.02 mg/L for 48-hour and 21-day exposure, respectively, but reproductive effects were not examined. The 8-day LC_{50} values for bluegill and rainbow trout exposed to *N*-phenyl-1-naphthylamine under flow-through conditions were 0.48 and 0.30 mg/L, respectively. No observable effect concentrations under the same conditions were 0.24 and 0.11 mg/L for bluegill and rainbow trout, respectively. The Committee recommends ecological effects testing because there are insufficient data to reasonably determine or predict the ecological effects of *N*-phenyl-1-naphthylamine.

References

(1) Aldrich. Catalog Handbook of Fine Chemicals. p. 1206 (1988).

(2) Brusik, D., and Matheson, D. "Mutagenic evaluation of 1,1-dimethylhydrazine, methylhydrazine and *N*-phenyl-alpha-naphthylamine." In: Proceedings of the 7th Annual Conference on Environmental Toxicology. 13, 14 and 15 October 1976. Aerospace Medical Research Laboratory, Wright-Patterson Air Force Base, OH. NTIS No. AD/A-041 973. pp. 108–129 (1977).

(3) Du Pont. "Aniline tumors of the bladder. Studies of urinary bladder tumors. Progress Report - February, 1945." TSCA Submission Section 8(d) by E.I. Du Pont De Nemours and Co. U.S. EPA/OPTS Public Files. Fiche No. OTS0215025.

(4) Greenhouse, G. "The evaluation of toxic effects of chemicals in fresh water by using frog embryos and larvae." *Environmental Pollution* 11:303–315 (1976).

(5) Greenhouse, G.A. "Toxicity of *N*-phenyl-α-naphthylamine and hydrazine to *Xenopus laevis* embryos and larvae." *Bulletin of Environmental Contamination and Toxicology* 18:503–511 (1977).

(6) Jarvholm, B., and Lavenius, B. "A cohort study on cancer among workers exposed to an antirust oil." *Scand. J. Work Environ. Health.* 7: 179–184 (1981).

(7) Jungclaus, G.A., Lopez-Avila, V., and Hites, R.A. "Organic compounds in an industrial wastewater: A case study of their environmental impact." *Environmental Science and Technology.* 12: 88–96 (1978).

(8) Kirk-Othmer. *Encyclopedia of Chemical Technology.* Volume 12. New York, NY: John Wiley & Sons. pp. 574–575 (1967).

(9) Kirk-Othmer. *Encyclopedia of Chemical Technology.* Volume 15. New York, NY: John Wiley & Sons. pp. 726–727 (1981).

(10) Kirk-Othmer. *Encyclopedia of Chemical Technology.* Volume 20. New York, NY: John Wiley & Sons. pp. 938–939 (1981).

(11) Lyman, W.J., Reehl, W.F., and Rosenblatt, D.H. Handbook of Chemical Property Estimation Methods. New York, NY: McGraw-Hill. Chapters 1 and 4 (1982).

(12) Meylan, W.M., Howard, P.H., and Sack, M. "Chemical market input/output analysis of selected chemical substances to assess sources of environmental contamination: Task I. Naphthylamines." Washington, DC: Office of Toxic Substances, U.S. EPA. (1976).

(13) NIOSH. National Occupational Exposure Survey (NOES). National Institute for Occupational Safety and Health. p. 302 (1990).

(14) NTP (National Toxicology Program). Results report 1–3–90. p. 108 (1990).

(15) Rosenberg, A. "Microbial metabolism of *N*-phenyl-1-naphthylamine in soil, soil suspensions, and aquatic ecosystems." *Chemosphere.* 12:1517–1523 (1983).

(16) Sax, N.I., and Lewis, R.J. Hawley's Condensed Chemical Dictionary. 11th edition. New York, NY: Van Nostrand Reinhold Company. p. 905 (1987).

(17) Shackelford, W.M., Cline, D.M., Faas, L., and Kurth, G. "An evaluation of automated spectrum matching for survey identification of wastewater components by gas chromatography-mass spectrometry". *Analytica Chimica Acta* .146:15-27 (1983).

(18) Sikka, H.C., Pack, E.J., Sugatt, R.H., Banerjee, S., Rosenberg, A., and Simson, B.W. "Environmental fate and effects of *N*-phenyl-1-naphthylamine and its disposition and metabolism in the rat." Springfield, VA: National Technical Information Service AD A1 06780 (1981).

(19) Wang, H., Wang, D., and Dzeng, R. "Carcinogenicity of *N*-phenyl-1-naphthylamine and *N*-phenyl-2-naphthylamine in mice." *Cancer Research.* 44:3098–3100 (1984).

2.4.c. *Sulfones—summary of recommended Studies.* Testing recommendations for the sulfones listed in the paragraph following Table 1 are summarized in Table 1.

Sulfones

Physical and Chemical Information

Except for the melting point of bis(4-chlorophenyl)sulfone (146° C; Ref. 1, Aldrich, 1988), the log octanol/water partition coefficient (0.97; Ref. 5, Hansch and Leo, 1981) and pK_a (2.41; Ref. 10, Perrin, 1965) of 4,4'-diaminodiphenyl sulfone, the log octanol/water partition coefficient (-0.77; Ref. 5, Hansch and Leo, 1981), melting point (27° C; Ref. 1, Aldrich, 1988), boiling point (285° C; Ref. 1, Aldrich, 1988), vapor pressure (7.70×10^{-3} mm Hg; Ref. 3, Daubert and Danner,

1989) and water solubility (3.79 × 105 mg/L; Ref. 2, Brown et al., 1975) of sulfolane, melting point (65–66° C; Ref. 1, Aldrich, 1988) of sulfolene, and melting point of bisphenol *S* (246° C; Ref. 1, Aldrich, 1988), the Committee has no information on measured physical/chemical properties of the sulfones listed in the paragraph following Table 1.

Rationale for Recommendation

A. *Exposure Information—Production/use/disposal/exposure/release.* The Committee believes that the sulfones listed in the paragraph following Table 1 are commercially available, and that many are produced in substantial quantities; actual volumes are CBI. In 1977, many of the chemicals were produced in quantities of 0.1 to 20 million lbs per year (Ref. 11, TSCAPP, 1990).

Sulfolane is used primarily as a solvent for the extraction of benzene, toluene, and xylene from aliphatic hydrocarbon mixtures. It is also used for the removal of acidic gases from natural gas and other gas streams, and it has extensive application as a specialty solvent (Ref. 8, MacGregor and Orle, 1983). Sulfolene is used as a specialty solvent in petroleum refining and in the manufacture of sulfolane (Ref. 8, MacGregor and Orle, 1983). The unique thermal stability and properties of the sulfones are utilized in the manufacture of specialty products. For example, bis(4-chlorophenyl)sulfone is used in the manufacture of engineering thermoplastics (Ref. 8, MacGregor and Orle, 1983).

B. *Evidence for exposure-Human exposure.* Sulfolane, diphenylsulfone, dimethylsulfone, and bis(4-chlorophenyl)sulfone have been detected (no quantitative data available) in U.S. drinking water supplies (Ref. 7, Lucas, 1984; Ref. 6, Kool et al., 1982). The NOES conducted during 1981–83 by NIOSH estimates that 6,461 workers were potentially exposed to sulfolane and 1,510 were potentially exposed to sulfolene (Ref. 9, NIOSH, 1989).

I. Chemical Fate Information

Except for data on the slow biodegradation of bis(4-chlorophenyl)sulfone in soil (Ref. 4, Guenzi and Beard, 1981), the Committee has no experimental chemical fate information on the sulfones listed in the paragraph following Table 1. Chemical fate testing is recommended because data are insufficient to reasonably determine or predict the physical/chemical properties of sulfones.

II. Health Effects Information

No health effects testing is recommended at this time. NTP's Board of Scientific Counselor's decision to defer a testing recommendation for bis(4-chlorophenyl)sulfone (referred to as *p,p'*-dichlorodiphenylsulfone by NTP) is consistent with the Committee's efforts to facilitate coordination of testing required or sponsored by U.S. Government organizations. The decision is also consistent with the Committee's procedures of reviewing production and exposure data (submitted under TSCA section 8(a)) as well as unpublished health and safety studies (submitted under TSCA section 8(d)) that are recommended for testing before designating subsequent health effects, chemical fate or ecological effects testing. These TSCA section 8 data and studies are automatically required for any ITC recommendation.

III. Ecological Effects Information

No ecological effects testing is recommended at this time.

References

(1) Aldrich. *Catalog handbook of fine chemicals.* Milwaukee, WI: Aldrich Chemical Company. pp. 96, 368, 1214 and 1410 (1988).

(2) Brown, S.L., Chan, F.Y., Jones, J.L., Liu, D.H., McCaleb, K.E., Mill, T., Sapios, K.N. and Schendel, D.E. "Research program on hazard priority ranking of manufactured chemicals." Stanford Research Institute, Menlo Park, CA. NTIS PB–263–163 (1975).

(3) Daubert, T.E. and Danner, R.P. "Physical and thermodynamic properties of pure chemicals: data compilation." Design Institute for Physical Property Data, American Institute of Chemical Engineers. New York, NY. Hemisphere Publishing Corp. Vol 4 (1989).

(4) Guenzi, W.D. and Beard, W.E. "Degradation of *p*-chlorophenyl methyl sulfide, -sulfoxide, and -sulfone in soil." *Soil Science.* 131(3):135–139 (1981).

(5) Hansch, C. and Leo, A.J. "Medchem project.: Issue No. 19. Pomona College, Claremont, CA. (1981).

(6) Kool, H.J., Van Kreijl, C.F. and Zoetman, B.C.J. "Toxicology assessment of organic compounds in drinking water." *Critical Reviews in Environmental Control.* 12:307–353 (1982).

(7) Lucas, S.V. "GC/MS analysis of organics in drinking water concentrates and advanced waste treatment concentrates." Health Effects Research Lab, Columbus, OH. EPA-600/1–84–020A&C. 1:133–162, 3:50–54 (1984).

(8) MacGregor, W.S. and Orle, J.V. "Sulfoxides." In: Kirk-Othmer Encyclopedia of Chemical Technology, 3rd. ed. A Stannden, Ed. John Wiley and Sons, New York, NY. 22:73–74 (1983).

(9) NIOSH. Department of National Industrial and Occupational Safety and Health, National Occupational Exposure Survey (NOES). p. 302 (1989).

(10) Perrin, D.D. "Dissociation constants of organic bases in aqueous solution." IUPAC Chemical Data Series, Buttersworth, London, England. (1965).

(11) TSCAPP. Computer Print-out of non-confidential production data from the TSCA Inventory, OTS, CID, U.S. Environmental Protection Agency, Washington, DC. (1990).

2.4.d. *Substantially produced chemicals in need of subchronic tests—Introduction.* On May 17, 1989, a list of 166 substantially produced, commercial chemicals were discussed by the Committee because they were coded for exposure and adverse effects potentials in the ITC's computerized, substructure-based chemical selection system. This computerized system allows the Committee to cost-effectively screen chemicals by identifying chemical groups with exposure potentials or with adverse effects potentials and chemicals that have common testing information deficiencies, e.g. subchronic toxicity, fish chronic toxicity, biodegradation, physical/chemical properties, etc. For chemicals produced in substantial quantities and for which there may be potential occupational exposure or environmental release or for which there may be potential adverse effects concerns and for which there appear to be basic testing information deficiencies, there should be a minimum amount of data to identify potentially problematic chemicals, e.g., a minimum amount of chemical fate, bioconcentration, bioaccumulation or ecological effects data should be available for potentially problematic chemicals (Ref. 4, Walker, 1990). The concept of obtaining minimum data to identify potentially problematic chemicals is consistent with the OECD's approach to voluntarily obtaining SIDS for high production volume chemicals.

In addition to using their system to identify chemical groups of concern, the Committee uses their computerized system and associated processes to implement Member Agency testing nominations. EPA and other Member Agencies have taken advantage of the system and associated processes to facilitate nominations, e.g., EPA nominated isocyanates that were recommended for testing in the Committee's 26th Report and aldehydes that were recommended for testing in this Report. Using the computerized system and associated processes to facilitate nominations and transform them into subsequent Committee recommendations allows the nominator to easily access Member Agency information through Committee-activated interagency networking and provides the nominator with very rapid

access to TSCA section 8 information without notice and comment rulemaking. Member Agency information networking is used to promote cost-effective use of U.S. Government chemical testing resources. The information submitted under TSCA 8(a) may provide access to production, exposure and environmental release confidential business information. Chemical fate, health effects, monitoring, epidemiology and ecological effects studies that could be submitted under TSCA 8(d) are tabulated for the nominator to facilitate identification and review of submissions that appear to be identical to testing recommendations or that appear to indicate a potential concern related to toxicity, exposure or persistence.

The May 17, 1989 ITC meeting during which the Committee discussed the 166 substantially produced chemicals was a planning meeting that was attended by industry and the Chemical Manufactures Association (CMA). After the meeting, CMA requested and received permission to make their members aware of the list of 166 substantially produced chemicals. CMA published the list of 166 substantially produced chemicals in their first issue of CHEMSTAR news with a suggestion that their members submit any unpublished data to the Committee (Ref. 1, CMA, 1989). In response to this suggestion, the Committee received a CBI submission for one chemical. The chemical for which the submission was received was one for which CMA had established a panel of representatives from member companies.

Analysis of the 166 substantially produced chemicals identified by the Committee's computerized system revealed that many chemicals did not have minimum health effects data; 51 chemicals had no subchronic toxicity data. A few of these 51 chemicals had no acute toxicity data; less than one-third of these 51 chemicals had mutagenicity data; most of these 51 chemicals had no reproductive effects, developmental toxicity, chronic toxicity, oncogenicity or neurotoxicity data. At least 22 of these 51 chemicals had NOES information indicating potential exposure to ≧ 1,000 workers; 21 of these 51 chemicals had vapor pressures ≧ 0.1 mmHg at ambient temperature indicating potential for accidental release and 9 of these 51 chemicals had octanol-water partition coefficients ≧ 1,000 indicating bioconcentration/bioaccumulation potential. At the Committee's request, the EPA's Exposure Assessment Branch estimated the persistence of these 51 chemicals as well as their potential consumer exposure. Also at the Committee's request, the EPA's Structure Activity Team reviewed available information on these 51 chemicals and expressed at least moderate concerns for the potential of these chemicals to cause adverse effects. Moderate concerns result when there is suggestive evidence in animal studies of mutagenicity, reproductive effects, developmental toxicity, chronic toxicity, oncogenicity or neurotoxicity or there is close homology (structural, functional or mechanistic) to chemicals with known toxicity. At the Committee's request, the EPA's Environmental Effects Branch also reviewed available information on these 51 chemicals and identified a number of testing information deficiencies related to aquatic toxicity. These individual evaluations and more comprehensive analyses of the Toxic Substances Control Act Test Submissions database, ITC Member Agency computer files and recently developed OECD SIDS dossiers revealed that subchronic toxicity data were available for 8 chemicals. After the individual evaluations and more comprehensive analyses, subchronic toxicity data could still not be located for 43 chemicals. An additional 8 chemicals for which no subchronic toxicity data were available are not being recommended at this time for subchronic toxicity testing, because these chemicals were recommended for other testing and the Committee wants an opportunity to review the TSCA section 8(d) health and safety study submissions and determine if they include subchronic toxicity studies, before recommending subchronic toxicity testing. The Committee is recommending 35 substantially produced chemicals only for subchronic toxicity testing at this time, because it wants an opportunity to evaluate the production and exposure information and the health and safety studies that will be submitted under TSCA sections 8(a) and 8(d), respectively. The Committee believes that after evaluation of the TSCA 8(a) and 8(d) information, they will be able to make further recommendations as to which of these 35 chemicals EPA should add to a subchronic toxicity testing listing rule and which of these chemical should be referred to others (e.g., NTP, OECD, etc.) with an option for testing. Information available to the Committee indicates that each of the 35 chemicals is substantially produced in volumes ranging from 1 million to 10 billion pounds per annum, but actual production volumes are CBI.

Summary of recommended studies. The substantially produced chemicals briefly described below and listed in the paragraph following Table 1 are recommended for subchronic toxicity testing.

p,p-Oxybis(benzenesulfonylhydrazide). A search for physical/chemical property data revealed a measured melting (decomposition) point of 160–161 degrees centigrade. It is used as a blowing agent for rubber and expanded plastics. There are considerable potential occupational exposures (NOES = 1494 workers) as well as potential inhalation/dermal consumer exposures. There are moderate concerns for potential adverse effects and it was mutagenic in *Salmonella* and caused unscheduled DNA synthesis in cultured cells.

Naphthalenedicarboxylic anhydride. A search for physical/chemical property data revealed a measured melting point of 267–269 degrees centigrade and a measured boiling point of 422 degrees centigrade. It is used as an intermediate for dyes, pigments, fluorescent whiteners and pesticides. It was in a class of anhydrides that NCI reviewed.

2-Ethylanthraquinone. A search for physical/chemical property data revealed a measured melting point of 108–111 degrees centigrade. It is used in chemical synthesis. There are potential occupational exposures (NOES = 483 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 200 mg/kg.

7-Amino-4-hydroxy-2-naphthalenesulfonic acid. A search for physical/chemical property data revealed none. It is used in one-component dry diazo copying process. There are potential occupational exposures (NOES = 737 workers) and potential dermal consumer exposures during changing of ink in copying machines. There are moderate concerns for potential adverse effects.

1-Naphthol. A search for physical/chemical property data revealed a measured melting point of 96 degrees centigrade, a measured boiling point of 288 degrees centigrade, and a measured water solubility of 866 mg/L. It is used as an intermediate for pesticides, drugs and dyes and in synthetic perfumes. There are substantial potential occupational exposures (NOES = 57,116 workers) as well as potential consumer exposures. There are moderate concerns for potential adverse effects; it was mutagenic in *Salmonella* and bacterial DNA repair assays. The LD_{50} values in guinea pigs, rabbits, cats, mice and rats

were 2, 9, 134, 275, and 2,400 mg/kg, respectively.

3-Hydroxy-2-naphthoic acid. A search for physical/chemical property data revealed a measured melting point of 222–223 degrees centigrade. It is used in dyes and pigments. There are considerable potential occupational exposures (NOES = 1641 workers) and potential dermal consumer exposures. There are moderate concerns for potential adverse effects; the LD_{50} value in mice was 800 mg/kg.

Triethylene glycol bis(2-ethylhexanoate). A search for physical/chemical property data revealed a measured boiling point of 219 degrees centigrade at 5 torr. It is used as a plasticizer. There are moderate concerns for potential adverse effects; LD_{50} values in guinea pigs and rats were 21 and 31 mg/kg, respectively.

2-(4-Morpholinyldithio)-benzothiazole. A search for physical/chemical property data revealed none. It is used as an accelerator in rubber processing. There are potential occupational exposures (NOES = 174 workers) and moderate concerns for adverse effects.

N-butylacrylate. A search for physical/chemical property data revealed a measured melting point of 50 degrees centigrade, a measured boiling point of 160 degrees centigrade, and a measured vapor pressure of 2 mmHg at 20 degrees centigrade. It is used as a monomer for resins, and in solvent coatings, adhesives, oil additives, emulsions for textiles, leathers and paper finishing. There are considerable potential occupational exposures (NOES = 5,136 workers) and potential dermal consumer exposures. There are moderate concerns for potential adverse effects; lowest threshold doses of 2304 and 690 mg/kg were reported for days 5 and 15, respectively, during a rat developmental toxicity study.

m-Benzenedisulfonic acid. A search for physical/chemical property data revealed a measured melting point of 137 degrees centigrade. It is used as an intermediate in resorcinol production and as a nitration catalyst in mononitrotoluene synthesis. There are potential occupational exposures (NOES = 56 workers) and moderate concerns for adverse effects.

3,4-Dichloronitrobenzene. A search for physical/chemical property data revealed a measured melting point of 40–42 degrees centigrade, a measured boiling point of 257–258 degrees centigrade, and a measured water solubility of 0.63 mg/L. It is used as a pesticide intermediate. There are moderate concerns for potential adverse effects; it was a positive mutagen in *Salmonella* and *Drosophila*. The LD_{50} value in mice was 1,384 mg/kg.

Isophthaloyl chloride. A search for physical/chemical property data revealed a measured melting point of 43–44 degrees centigrade and a measured boiling point of 276 degrees centigrade. It is used as an intermediate for dyes, synthetic fibers, resins, films, protective coatings and laboratory reagents. There are potential occupational exposures (NOES = 46 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,200 mg/kg.

Terephthaloyl chloride. A search for physical/chemical property data revealed a measured melting point of 79–81 degrees centigrade and a measured boiling point of 259 degrees centigrade. It is used as an intermediate for plasticizers, resins and polymers. There are potential occupational exposure (NOES = 212 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,140 mg/kg.

4-Ethoxynitrobenzene. A search for physical/chemical property data revealed a measured melting point of 60 degrees centigrade and a measured boiling point of 283 degrees centigrade. It is used to manufacture dyes and intermediates. There are potential occupational exposures (NOES = 207 workers) and moderate concerns for adverse effects. It produced positive results in a *Salmonella* assay, a *Drosophila* dominant lethal assay, a bacterial DNA test and a rat cytogenetic study. The LD_{50} value in rats was 2,100 mg/kg.

Acetoacetanilide. A search for physical/chemical property data revealed a measured melting point of 85–86 degrees centigrade. It is used as a dyestuff intermediate, in organic synthesis and in rubber compounding. There are considerable potential occupational exposure (NOES = 1108 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 3,400 mg/kg.

Butyric anhydride. A search for physical/chemical property data revealed a measured melting point of -75 degrees centigrade and a measured boiling point of 200 degrees centigrade. It is used to manufacture butyrates, drugs and tanning agents. There are considerable potential occupational exposures (NOES = 4,817 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 2,000 mg/kg. It was in a class of anhydrides that NCI reviewed.

Isobutyl acrylate. A search for physical/chemical property data revealed a measured boiling point of 61–63 degrees centigrade, a measured water solubility of 1800 mg/L and a measured vapor pressure of 10.7 mmHg at 20 degrees centigrade. It is used in synthesis of acrylic ester polymers. There are moderate concerns for adverse effects. The LC_{50} value in rats was 2,000 ppm.

Diethylene glycol dimethylether. A search for physical/chemical property data revealed a measured melting point of -68 degrees centigrade and a measured boiling point of 162 degrees centigrade. It is used as a solvent and in reaction medium for grignard and similar syntheses. There are potential occupational exposures (NOES = 207 workers) and moderate concerns for adverse effects. It was positive in a sperm morphology test and a dominant lethal test and caused adverse reproductive and developmental effects during short-term studies. The LD_{50} value in mice was 2,978 mg/kg.

Carbinol acetate. A search for physical/chemical property data revealed a measured melting point of -25 degrees centigrade, a measured boiling point of 217 degrees centigrade and a measured vapor pressure of 0.1 mmHg at 20 degrees centigrade. It is used as a solvent for cellulose esters, gums and resins and to manufacture coatings, lacquers and printing inks. There are considerable potential occupational exposures (NOES = 7,649 workers) and moderate concerns for adverse effects and potential consumer exposures.

Bromamine acid. A search for physical/chemical property data revealed none. It is used as a dye intermediate. There are potential occupational exposures (NOES = 737 workers) and moderate concerns for adverse effects.

4-Methyl-2-nitrophenol. A search for physical/chemical property data revealed a measured melting point of 108 degrees centigrade and a measured boiling point of 234 degrees centigrade. It is used to manufacture dyes. There are moderate concerns for adverse effects. The LD_{50} value in rats was 3,360 mg/kg.

4-(Acetylamino) benzenesulfonyl chloride. A search for physical/chemical property data revealed a measured melting point of 149 degrees centigrade. It is used to manufacture sulfa drugs. There are considerable potential occupational exposures (NOES = 1,481 workers) and moderate concerns for adverse effects.

2,4-Pentanedione. A search for physical/chemical property data revealed a measured melting point of -23 degrees centigrade, a measured boiling point of 141 degrees centigrade, a measured water solubility of 125,000

mg/L and a measured vapor pressure of 1.3 mmHg at 25 degrees centigrade. It is used as a solvent for cellulose acetate, a chelating agent for metals, as a lubricant additive and in paint dryers. There are considerable potential occupational exposures (NOES = 4,841 workers) and high concerns for adverse effects. It was mutagenic in chinese hamster ovary cells. The LD_{50} value in rats was 1,000 ppm. EPA proposed a Significant New Use Rule based on reported neurotoxicity and production of a nervous system disorder that is characterized by an irreversible cerebellar syndrome in experimental animals, genotoxic effects and reported contact dermatitis and urticaria in humans (Ref. 2, EPA, 1989). In response to this proposal, Union Carbide submitted public comments and publications and reported that 2,4-pentanedione produced a "slight dominant lethal effect at the spermatid stage of spermatogenesis" and "no embryotoxicity or teratogenicity" to Fischer 344 rats (Ref. 3, Union Carbide, 1989).

Propanoic anhydride. A search for physical/chemical property data revealed a measured melting point of -45 degrees centigrade and a measured boiling point of 167–169 degrees centigrade. It is used as an esterifying agent for fats, oils, cellulose and a dehydrating medium for nitrations and sulfonations, alkyd resins, dyestuffs, and pharmaceuticals. There are potential occupational exposures (NOES = 489 workers) and moderate concerns for adverse effects. The LD_{50} value in rats was 2,360 mg/kg. It was in a class of anhydrides that NCI reviewed.

Bis(2-ethylhexyl)-2-butenedioate. A search for physical/chemical property data revealed a measured boiling point of 209 degrees centigrade. It is used in emulsions and copolymerized with vinyl acetate. There are considerable potential occupational exposures (NOES = 3,352 workers) and moderate concerns for adverse effects.

Perfluorotributylamine. A search for physical/chemical property data revealed a measured boiling point of 177 degrees centigrade. It is used in inert fluids and as a solvent. There are slight potential occupational exposures (NOES = 7 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 1,200 mg/kg.

Perfluoro-N-hexane. A search for physical/chemical property data revealed a measured melting point of -4 degrees centigrade and a measured boiling point of 57 degrees centigrade. It is used in liquid fluorocarbons.

Trichloromethanesulfenyl chloride. A search for physical/chemical property data revealed a measured boiling point of 148–149 degrees centigrade and a measured vapor pressure of 0.6 mmHg at 20 degrees centigrade. It is used in the synthesis of lubricant additives. There are considerable potential occupational exposures (NOES = 7,790 workers) and moderate concerns for adverse effects. It was a positive mutagen in a bacterial DNA assay. The LD_{50} value in rats was 8 mg/kg.

1,2-Dichlorobutane. A search for physical/chemical property data revealed a measured boiling point of 124 degrees centigrade and a measured vapor pressure of 2.7 mmHg at 25 degrees centigrade. It is used as a butadiene intermediate. There are moderate concerns for adverse effects.

1,3-Dicyanobenzene. A search for physical/chemical property data revealed a measured melting point of 160–162 degrees centigrade. It is used as an intermediate for amines, synthetic fibers, agricultural chemicals, rust inhibitors and pharmaceuticals. There are potential occupational exposures (NOES = 208 workers) and moderate concerns for adverse effects. The LD_{50} value in mice was 178 mg/kg.

3,4-Dichlorobutene. A search for physical/chemical property data revealed a measured melting point of -61 degrees centigrade, a measured boiling point of 115–117 degrees centigrade and a measured vapor pressure of 3.5 mmHg at 25 degrees centigrade. It is used as chloroprene and adiponitrile intermediates. There are moderate concerns for adverse effects. The LD_{50} value in mice was 724 mg/kg. It was positive in *Salmonella* and *in vivo* cytogenetics assays.

2-(2-Aminoethoxy)-ethanol. A search for physical/chemical property data revealed a measured melting point of -13 degrees centigrade and a measured boiling point of 221 degrees centigrade. It is used to remove acid components from gases. There are considerable potential occupational exposures (NOES = 5,579 workers) and moderate concerns for adverse effects. The LD_{50} value in rats was 5,660 mg/kg.

Quinacridone. A search for physical/chemical property data revealed none. It is used as a dye and pigment. There are substantial potential occupational exposures (NOES = 23,292 workers) and moderate concerns for adverse effects.

Ammonium carbamate. A search for physical/chemical property data revealed a measured melting point of 133–134 degrees centigrade. It is used in urea manufacture.

Hexa(methoxymethyl) melamine. A search for physical/chemical property data revealed none. It is used during leather manufacturing, rubber bonding and to produce polyester powder coatings. There are substantial potential occupational exposures (NOES = 18,033 workers). The LD_{50} value in mice was 550 mg/kg.

References

(1) CMA. Chemical Manufacturers Association. "ITC Zeroes In." *CHEMSTAR NEWS.* 1(1):4 (1989).

(2) EPA. Environmental Protection Agency. Proposed Rule. "2,4-Pentanedione; Proposed Significant New Use of a Chemical Substance." 54 FR 39548–39551, September 27, 1989.

(3) Union Carbide. "Comments of Union Carbide Chemicals and Plastics Company, Inc. on EPA's Proposed Significant New Use Rule on 2,4-Pentanedione." Environmental Protection Agency, TSCA Public Reading Room, Washington, DC (October 27, 1989).

(4) Walker, J.D. "Chemical fate, bioconcentration, and environmental effects testing: Proposed testing and decision criteria." *Toxicity Assessment: An International Journal.* 5:103–134 (1990).

[FR Doc. 91–5260 Filed 3–5–91; 8:45 am]
BILLING CODE 6560–50–F

federal register

Wednesday
March 6, 1991

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development; Community Development Work Study Program; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3197- ; FR-2914-N-01]

Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: This Notice invites applications from institutions of higher education, area-wide planning organizations and States for grants under the Community Development Work Study Program (CDWSP). The CDWSP, authorized by the Housing and Community Development Act of 1974, as amended, assists economically disadvantaged and minority students participating in work study programs in such institutions. The deadline for submission of applications shall be no earlier than April 22, 1991. The specific application submission date will be specified in the RFGA. Up to three million dollars is available from FY 1991 appropriations (plus any recaptured funds from FY 1989 and FY 1990 appropriations) to fund work study programs to be carried out from September, 1991 to September, 1993. Applicants may also apply for grants to fund work study programs to be carried out from September, 1992 to September, 1994. However, approvals for such applications will be conditioned on the availability of FY 1992 appropriations, and * * *.

Applicants wishing to receive grants from available FY 1992 appropriations must apply pursuant to the requirements of this Notice. HUD does not anticipate the issuance of an additional Notice for those funds.

EFFECTIVE DATE: March 6, 1991.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-3176. The TDD number is (202) 708-0564. These are not toll-free numbers. Application packages (requests for grant application) may be obtained by written request from the following address: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, (ACS-LJ) 451 Seventh Street, SW., room 5256, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

A. Background

Section 107(c) of the Housing and Community Development Act of 1974, as amended, (the Act) authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management. This notice announces HUD's intention to award up to $3 million from the FY 1991 appropriation (plus any recaptured funds from FY 1989 and FY 1990 appropriations), and up to $3 million from the FY 1992 appropriation (plus any additional funds recaptured from the FY 1991 appropriation), if funds are made available by appropriations in FY 1992. Awards will be made under the HUD implementing regulations at 24 CFR 570.400 and 570.415 and the provisions of this Notice.

B. Eligible Applicants

The following are eligible to apply for assistance under the program subject to the conditions noted below:

1. Institutions of higher education offering graduate degrees in a community development academic program;

2. Institutions of higher education offering undergraduate degrees in a community development academic program if no institutions of higher education in the standard metropolitan statistical area (SMSA) or non-SMSA area in which they are located offer graduate degrees in a community development academic program;

3. Area-wide planning organizations (APOs) which apply on behalf of two or more institutions of higher education located in the same SMSA or non-SMSA area as the APO;

4. States which apply on behalf of two or more institutions of higher education located in the State. If a State is approved for funding, institutions of higher education located in the State are not eligible recipients. If an APO is approved for funding, institutions of higher education located in the SMSA or non-SMSA non-metropolitan area served by the APO are not eligible recipients.

C. Threshold Requirements

To be eligible for ranking, applications must meet each of the following threshold requirements:

1. The application must be filed in the application form prescribed by HUD, and within the required time prescribed by the Request For Grant Application released pursuant to this notice.

2. The application must demonstrate that the applicant is eligible to participate;

3. The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community development work study program to carry out its activities under CDWSP;

4. Institutions of higher education and area-wide planning organizations/States must maintain a 50 percent rate of graduation of students from previous CDWSP-funded academic programs in order to participate in the next round of CDWSP funding. Institutions of higher education and Area-Wide Planning Organizations (APO's)/States funded under the FY 1988 CDWSP funding round which did not maintain such a rate will be excluded from participating in the FY 1991 funding round. Such institutions and APO's/States are eligible to participate in the 1992 round.

D. Selection Factors for Institutions of Higher Education (110-points)

The following factors will be considered by the Department in evaluating applications received from institutions of higher education in response to the solicitation.

1. *Academic Program (53-points, as allocated below)*

Each application will be reviewed for evidence of the school's commitment to administering a CDWSP and the overall strength of its commitment to meeting the needs of minority and other economically disadvantaged individuals. This commitment will be evaluated in the following areas:

a. Relative quality of the academic program offered by the institution of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements for students; (8-points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8-points) and

(3) Qualifications of the faculty and the percentage of time they will teach in the academic area. (6-points)

b. Quality of academic supervision—Qualifications of the academic supervisor and the percentage of time they will commit to the students; (7-points)

c. Amount of resources to be committed by the institution to the academic program.

(1) Appropriateness and adequacy of the resources (facilities and equipment) that will be devoted to the academic area; (2-points)

(2) The degree to which the applicant is able to contribute funds to support the total cost of the project; (5-points) and

(3) The degree to which the applicant will utilize faculty and staff administrators on staff. (7-points)

d. Rate of graduation—Applicant's success rate in graduating students previously enrolled in the HUD CDWSP or similar work study program. (10-points)

2. Student Work Placement Assignment (9-points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3-points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3-points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3-points)

3. Seminars (4-points as allocated below)

The degree to which the proposed seminars will relate the experience provided under the work placement assignments with the educational experience provided under the academic programs and will address career planning and permanent job placement. (4-points)

4. Placement Opportunities (13-points, as allocated below)

a. Extent to which the institution's educational program (based on past experience) leads directly and immediately to career opportunities in the community and economic development fields; (6-points) and

b. The applicant's success in assisting graduates of the HUD CDWSP or similar work study program to find permanent employment in community development funded agencies. (7-points)

5. Program Coordination and Administration (16-points, as allocated below)

a. The applicant's ability to track and monitor the progress of the students previously enrolled in the HUD or similar work study program, including the students who drop out of the program. (4-points)

b. The degree to which the Program Director has clear responsibility, ample percentage of time, and sufficient institutional or academic authority to coordinate the overall administration of the program. (8-points)

c. The adequacy of the applicant's plan for placing students on rotating assignments in community development work placement assignments and keeping track of students during the two-year academic period and the internship. (4-points)

6. Institution's Commitment (15-points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and other economic disadvantaged students; (4-points)

b. The success of past and current efforts in preparing these students for careers in community and economic development; (6-points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3-points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for other minority economically disadvantaged students in the academic areas or the institution as a whole. (2-points)

E. Selection Factors for Area-Wide Planning Organizations/States (110-points)

The following factors will be considered by the Department in evaluating applications received from area-wide planning organizations/States in response to this NOFA. Each application must contain sufficient technical information to be reviewed for its technical merit.

1. Academic Program (53-points, as allocated below)

a. Relative quality of the academic program offered by the institutions of higher education.

(1) Quality of the academic program in terms of community and economic development course offerings and academic requirements; (8-points)

(2) Appropriateness of the curriculum to prepare students for careers in the community and economic development field; (8-points) and

(3) Qualifications of the faculty at each college/university listed in the submission and the percentage of time they will teach in the academic area. (6-points)

b. Qualifications of the academic area supervisor at each college/university listed in the submission and the percentage of time they will commit to the students. (7-points)

c. The applicant's and institution's plan for the use of its facilities, equipment and financial resources in support of the CDWSP. (2-points)

d. The degree to which each college/university listed in the application is able to contribute funds to support the total cost of the project; (5-points)

e. The degree to which each college/university listed in the application will utilize faculty and staff administrators on staff; (7-points) and

f. The success rate of each institution at higher education applying under the applicant in graduating students previously enrolled in the HUD or similar work study program. (10-points)

2. Student Work Placement Assignment (9-points, as allocated below)

a. The extent to which the participating students will receive a sufficient number and variety of work placement assignments; (3-points)

b. The extent to which the assignments will provide practical and useful experience to students participating in the program; (3-points) and

c. The extent to which the assignments will further the participating students' preparation for professional careers in community or economic development, community planning, or community management. (3-points)

3. Seminars (4-points, as allocated below)

The degree to which the proposed seminars will relate to the experience provided under the work placement assignments with the educational experience provided under the academic program, and will address career planning and permanent job placement. (4-points)

4. Placement Opportunities (13-points)

a. The extent to which the educational program for each college/university listed in the application (based on past

experience) leads directly and immediately to career opportunities in the community and economic development fields (6-points) and

b. The applicant's success in assisting graduates of the HUD Community Development Work Study Program (CDWSP) or similar work study program find permanent employment in community development funded agencies. (7-points)

5. Program Coordination and Administration (16-points, as allocated below)

a. The extent to which the applicant has established a committee to coordinate activities between program participants to advise the recipient on policy matters, to assist the recipient in ranking and selection of participating students, and to review disputes concerning compliance with program agreements and performance; (8-points)

b. The applicant's ability to track and monitor progress of students enrolled in the program and those who drop out; (4-points) and

c. The adequacy of the applicant's plan for placing students in work placement assignments and keeping track of students during the two-year academic period and during the internship, respectively. (4-points)

6. Institution's Commitment (15-points, as allocated below)

a. The extent to which the applicant has a recruitment program that demonstrates an active, aggressive, and imaginative effort to identify and attract qualified minorities and other economically disadvantaged students; (4-points)

b. The success of past and current efforts of colleges/universities listed in the application in preparing these students for careers in community and economic development; (6-points)

c. The extent to which the CDWSP award will result in a net increase of these students in each academic area; (3-points) and

d. The extent to which the CDWSP award will not result in a decrease in the amount of the institution's own financial support available for other minority economically disadvantaged students in the academic areas or the institution as a whole. (2-points)

F. Program Policy Factors

HUD may make awards out of either rank order to achieve geographic diversity. If any of the ten HUD Regions has less than three (3) selected applicants after initial distribution, the selecting official may select out of rank order up to three (3) of the highest ranking applications in each Region. Also, HUD may provide assistance to support a number of students that is less than the number requested under applications in order to provide assistance to as many highly rated applications as possible. In addition, HUD might recommend a lower funding level than the requested amount for tuition, work stipend, books and additional support.

G. Application Procedures

HUD will provide a Request for Grant Application (RFGA) containing the information that applicants for CDWSP assistance must submit, upon written request to: Department of Housing and Urban Development, Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., room 5256 (ACS–LJ), Washington, DC 20410. The deadline for submission of applications shall be no earlier than April 22, 1991. The specific application submission date will be specified in the RFGA. Any applications actually received by HUD after that date will be rejected. The RFGA will provide complete instructions on preparing and submitting applications.

Following the expiration of the application submission deadline, HUD will review and rank applications consistent with the procedures described in this Notice and the provisions of the program regulations at 24 CFR 570.415. If, during this process, an application is determined to contain a deficiency involving completeness, adequacy of supporting documentation, or internal consistency, HUD will notify the applicant in writing. HUD will accept submissions to correct the deficiency for a period of 14 days from the date on the HUD notification. Applications awarded a CDWSP grant from FY 1991 appropriations will be notified by approximately June 5, 1991. Notifications of approvals conditioned on FY 1992 appropriations will be made at the same time as approved applications are announced for the FY 1991 program.

H. Other Information

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collection described in this document is 2506–0104.

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR part 50.20 (k) & (l) of the HUD Regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and therefore are exempt from further environmental reviews under NEPA.

The catalog of Federal Domestic Assistance program number is 14.234.

Dated: February 25, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91–5274 Filed 3–5–91; 8:45 am]

BILLING CODE 4210–29–M

federal register

Wednesday
March 6, 1991

Part X

The President

Proclamation 6256—Vermont Bicentennial Day, 1991

Federal Register
Vol. 56, No. 44
Wednesday, March 6, 1991

Presidential Documents

Title 3—

The President

Proclamation 6256 of March 4, 1991

Vermont Bicentennial Day, 1991

By the President of the United States of America

A Proclamation

On March 4, 1791, the Republic of Vermont became the 14th State in our Union—the first to join the original thirteen. The Vermont State motto, "Freedom and Unity," is a fitting tribute to the history of the State and to the character of its people. Long before Vermont entered the Union, its inhabitants demonstrated great devotion to those ideals, ideals on which the United States is founded.

In our Nation's War for Independence, as in every great struggle for freedom since, Vermonters made distinguished contributions. Today, Ethan Allen and his Green Mountain Boys, tenacious fighters who played decisive roles at the Battles of Bennington and Ticonderoga, are remembered among America's great Revolutionary War heroes. Their fierce love for the land and their fervent devotion to the cause of freedom and independence were shared by hundreds of other settlers from the region that became our 14th State.

Vermont's dedication to freedom was also evident in its first constitution—written in 1777, it forbade slavery and adopted universal male suffrage. Indeed, by the beginning of the Civil War, in which it played a major role, Vermont had a long-standing reputation as one of the most firmly abolitionist States. The 16 Vermont regiments dispatched to the Union Army during the Civil War represented the highest number of troops per capita of any State. Vermonters not only fought bravely for the preservation of the Union and for an end to slavery, they also made vital contributions at the pivotal Battle of Cedar Creek.

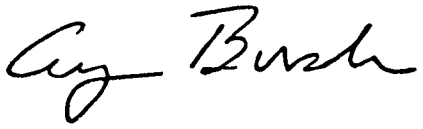
Over the years, countless other Vermonters have made outstanding contributions to our country. Distinguished natives of the Green Mountain State include the eloquent Stephen Douglas, remembered by many for his forceful arguments during the historic Lincoln-Douglas debates; the inventor, Thomas Davenport; Presidents Calvin Coolidge and Chester Arthur; and Warren R. Austin, the first United States Representative to the United Nations.

Today, Vermonters take just pride in their heritage as a State committed to the ideals of freedom and unity. That heritage goes hand in hand with a rich legacy of growth and development. Beloved by millions of visitors for its breathtaking mountains and unspoiled beauty, Vermont is also home to a number of vital industries, ranging from electronics to agricultural production.

In recognition of Vermont's contributions to the United States and in commemoration of its Bicentennial, the Congress, by Senate Joint Resolution 58, has designated March 4, 1991, as "Vermont Bicentennial Day," and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 4, 1991, as Vermont Bicentennial Day.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-5528
Filed 3-5-91; 11:16 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 44

Wednesday, March 6, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904.....1
8905-9120.....4
9121-9268.....5
9269-9580.....6

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:
Memorandums:
February 21, 1991.....9271
Presidential Determinations:
No. 91-20 of January 25, 1991.....8681
Executive Orders:
12163 (See Presidential Determination 91-20 of January 25, 1991).....8681
Proclamations:
6254.....9121
6255.....9269
6256.....9579

5 CFR

Proposed Rules:
581.....9181

7 CFR

17.....9273
46.....8683
301.....9273
905.....8684
918.....8905
1046.....9274
Proposed Rules:
12.....9258
704.....9293
920.....9302
1005.....9306
1410.....9293
1413.....9251

8 CFR

241.....8906
242.....8906
274.....8685

9 CFR

331.....8907, 8908
381.....8907, 8908

11 CFR

110.....9275

12 CFR

265.....8687
600.....8910
601.....8910
602.....8910
603.....8910
604.....8910
606.....8910
611.....8910
612.....8910
614.....8910
615.....8910
617.....8910
618.....8910
619.....8910
621.....8910
960.....8688
Proposed Rules:
327.....9308

14 CFR

21.....8699-8701
25.....8699-8701
39.....8704-8707
1209.....8910
Proposed Rules:
39.....8732, 8733, 8935
91.....8938

16 CFR

305.....9123
1500.....9276
1502.....9276
Proposed Rules:
1700.....9181

17 CFR

240.....9124

18 CFR

1301.....9288
Proposed Rules:
35.....8938

19 CFR

Proposed Rules:
141.....9311

21 CFR

5.....8709
520.....8709, 8710
556.....8710
1308.....9132
1316.....8685
Proposed Rules:
201.....9312
808.....8940

22 CFR

514.....8711

24 CFR

Ch. I.....9472
91.....9169
Proposed Rules:
203.....8941

26 CFR

1.....8911
31.....8911
301.....9169
602.....8912
Proposed Rules:
1.....8943-8967

LIST OF PUBLIC LAWS

Last List February 21, 1991

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-275-3030).

S.J. Res. 76/Pub. L. 102-6

Commending the Peace Corps and the current and former Peace Corps volunteers on the thirtieth anniversary of the establishment of the Peace Corps. (Mar. 1, 1991; 105 Stat. 23; 2 pages) Price: $1.00